

**LOS ANGELES COUNTY  
COMMUNITY AND SENIOR SERVICES**



**APPENDIX A  
REQUIRED AGREEMENT**

**AGREEMENT  
BY AND BETWEEN  
COUNTY OF LOS ANGELES  
AND**

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**FOR  
COMMUNITY AND SENIOR CENTER  
AUTOMATION SOLUTION**

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**JANUARY 2011**

## **NOTICE TO RFP PROPOSERS**

**THIS BASE DOCUMENT, TOGETHER WITH ALL EXHIBITS ATTACHED THERETO, INCLUDES THE REQUIREMENTS KNOWN TO COUNTY AT OF THE DATE OF ISSUANCE OF THE RFP.**

**WHILE COUNTY MAKES NO REPRESENTATION OR WARRANTY THAT ALL OF THE PROVISIONS IN THIS REQUIRED AGREEMENT WILL BE INCLUDED IN ANY RESULTANT AGREEMENT, THAT SUCH SAMPLE PROVISIONS WILL NOT BE MODIFIED IN ANY RESULTANT AGREEMENT OR THAT OTHER PROVISIONS WILL NOT BE INCLUDED IN ANY RESULTANT AGREEMENT, THE PROPOSERS ARE TO ASSUME THAT, UNLESS COUNTY DEEMS IT NECESSARY TO REVISE THIS DOCUMENT CONSISTENT WITH THE AGREED UPON STATEMENT OF WORK OR OTHERWISE, THE RESULTANT AGREEMENT SHALL BE BASED ON AND BE SUBSTANTIALLY SIMILAR TO THIS DOCUMENT. CONSEQUENTLY, ANY EXCEPTIONS TO THIS DOCUMENT IDENTIFIED BY THE PROPOSERS SHALL BE TAKEN INTO CONSIDERATION WHEN EVALUATING PROPOSALS.**

**THIS DOCUMENT DOES NOT STAND ALONE AND MUST BE READ AND REVIEWED IN CONNECTION WITH ALL OTHER PARTS OF THE RFP, INCLUDING ANY EXHIBITS, ATTACHMENTS AND SCHEDULES THERETO.**

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## **EXHIBITS**

Exhibit A Statement of Work

Attachment A.1 System Requirements

Attachment A.2 System Configuration

Exhibit B Pricing Schedule

Schedule B.1 Optional Work Schedule

Exhibit C Project Schedule

Exhibit D Service Level Agreement

Schedule D.1 Network Data Classification Standard

Schedule D.2 IT Confidentiality and Acceptable Use Policies

Exhibit E Administration of Agreement

Exhibit F Confidentiality and Assignment Agreement

Exhibit G Contractor's EEO Certification

Exhibit H Jury Service Program

Exhibit I Safely Surrendered Baby Law

Exhibit J Charitable Contributions Certification

Exhibit K Source Code Escrow Agreement

Exhibit L Request for Proposals (incorporated by reference)

Exhibit M Contractor's Proposal (incorporated by reference)

This Agreement (hereinafter “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the County of Los Angeles, a political subdivision of the State of California (hereinafter “County”) and \_\_\_\_\_ (hereinafter Contractor”) (hereinafter collectively also the “parties”).

## **RECITALS**

WHEREAS, Contractor is qualified by reason of experience, preparation, equipment, organization, qualifications and staffing to provide to County the work contemplated by this Agreement; and

WHEREAS, County, by and through its Community and Senior Services Department, is authorized by, inter alia, California Government Code sections 26227 and 31000 to contract for goods and services, including the work contemplated herein; and

WHEREAS, County issued a Request for Proposals (RFP) for the provision and maintenance of the \_\_\_\_\_ Solution; and

WHEREAS, Contractor has submitted a proposal to County for the provision and maintenance of the \_\_\_\_\_ Solution, based on which Contractor has been selected for recommendation for award of this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein and for good and valuable consideration, County and Contractor agree as follows:

### **1. APPLICABLE DOCUMENTS**

#### **1.1 INTERPRETATION**

The provisions of this Agreement (hereinafter “Base Agreement”), along with Exhibits A, B, C, D, E, F, G, H, I and J including all Attachments and Schedules thereto, attached hereto, and Exhibits K, L and M, not attached hereto, all described in this Paragraph 1.1 below and incorporated herein by reference, collectively form and throughout and hereinafter are referred to as the “Agreement”. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule or the contents or description of any task, subtask, deliverable, goods, service or other work, or otherwise, between this Base Agreement and the Exhibits, Attachments and Schedules or between the Exhibits, Attachments and Schedules, such conflict or inconsistency shall be resolved by giving precedence first to this Base Agreement, and then to the Exhibits, Attachments and Schedules according to the following descending priority:

Exhibit A – Statement of Work

Attachment A.1 – System Requirements

Attachment A.2 – System Configuration

Exhibit B – Pricing Schedule

Schedule B.1 – Optional Work Schedule

Exhibit C – Project Schedule

Exhibit D – Service Level Agreement

Schedule D.1 – Network Data Classification Standard

Schedule D.2 – IT Confidentiality and Acceptable Use Agreement

Exhibit E – Administration of Agreement

- Exhibit F – Confidentiality and Assignment Agreement
- Exhibit G – Contractor’s EEO Certification
- Exhibit H – Jury Service Program
- Exhibit I – Safely Surrendered Baby Law
- Exhibit J – Charitable Contributions Certification
- Exhibit K – Source Code Escrow Agreement
- Exhibit L – Request for Proposals (incorporated by reference)
- Exhibit M – Contractor’s Proposal (incorporated by reference)

## 1.2 ENTIRE AGREEMENT

This Base Agreement, together with the Recitals and all Exhibits, Attachments and Schedules (collectively referred to herein as “Agreement”), as further defined in Paragraph 1.1 (Interpretation) above, constitutes the complete and exclusive statement of understanding between the parties and supersedes all previous and contemporaneous agreements, whether written or oral, and any and all communications and negotiations between the parties relating to the subject matter of this Agreement.

## 1.3 DEFINITIONS

The terms and phrases in this Paragraph 1.3 in quotes and with initial letter capitalized, where applicable, whether singular or plural, shall have the particular meanings set forth below whenever such terms are used in this Agreement.

### 1.3.1 AAA

The term “AAA” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

### 1.3.2 ACCEPTANCE

The term “Acceptance” shall mean County’s written approval of any tasks, subtasks, deliverables, goods, services or other Work, including System Tests, provided by Contractor to County pursuant to this Agreement.

### 1.3.3 ADDITIONAL APPLICATIONS

The term “Additional Application(s)” shall mean Additional Software of Contractor, including licenses for additional software, products, third party software and any other software tools or modules, and related Documentation, that Contractor may provide as part of Application Software following Go-Live upon County’s request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work). Once accepted and approved by County, Additional Applications shall become part of, and be deemed, Application Software for the purpose of this Agreement.

### 1.3.4 ADDITIONAL CUSTOMIZATIONS

The term “Additional Customization(s)” shall mean configurations and any other customizations of Application Software, and related Documentation that Contractor may provide following Go-Live upon County’s request therefor as Software Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work). Once accepted and

approved by County, Additional Customizations shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.5 ADDITIONAL HARDWARE

The term “Additional Hardware” shall mean the hardware and other equipment, and related Documentation, that Contractor may provide as part of Optional Work following Go-Live upon County’s request therefor.

1.3.6 ADDITIONAL INTERFACES

The term “Additional Interface(s)” shall mean Interfaces, and related Documentation, that Contractor may provide following Go-Live upon County’s request therefor as Software Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work). Once accepted and approved by County, Additional Interfaces shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.7 ADDITIONAL LICENSES

The term “Additional License(s)” shall mean additional Licenses for Application Software, and related Documentation, that Contractor may provide following Go-Live upon County’s request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work). Once accepted and approved by County, Additional Licenses shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.8 ADDITIONAL PRODUCTS

The term “Additional Product(s)” shall mean any item of Additional Software or Additional Hardware, and related Documentation, that Contractor may provide as part of Optional Work following Go-Live upon County’s request therefor.

1.3.9 ADDITIONAL SOFTWARE

The term “Additional Software” shall mean Additional Applications and Additional Licenses that are part of Application Software, and related Documentation, that Contractor may provide following Go-Live upon County’s request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work). Once accepted and approved by County, Additional Software shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.10 ADDITIONAL TRAINING

The term “Additional Training” shall mean the Training regarding the Solution, which Contractor may provide following Go-Live upon County’s request therefor as Professional Services in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work).

1.3.11 AMENDMENT

The term “Amendment” shall have the meaning specified in Paragraph 4 (Changes Notices and Amendments).

1.3.12 ANNUAL FEES

The term “Annual Fee(s)” shall mean and include annual Maintenance Fees to be paid by County to Contractor for System Maintenance for Maintenance Periods commencing upon Final Acceptance in accordance with the terms of this Agreement, including Exhibit B (Pricing Schedule).

1.3.13 APPLICATION MODIFICATIONS

The term “Application Modification(s)” shall mean Software Modifications, Additional Software, Updates and any Replacement Products, and related Documentation, that may be provided by Contractor to County under this Agreement. Once accepted and approved by County, Application Modifications shall become part of, and be deemed, Application Software for the purpose of this Agreement.

1.3.14 APPLICATION SOFTWARE

The term “Application Software” shall mean all Baseline Application, Interfaces and Applications Modifications, including Server Application and Client Application, and related Documentation, provided by Contractor to County as part of the Solution in accordance with the terms of this Agreement.

1.3.15 BASE AGREEMENT

The term “Base Agreement” shall have the meaning specified in Paragraph 1.1 (Interpretation) above.

1.3.16 BASELINE APPLICATION

The term “Baseline Application” shall mean Core Application, Third Party Application, Baseline Customizations and Baseline Interfaces, and related Documentation, implemented by Contractor pursuant to this Agreement as part of the Implementation Services in order to meet the System Requirements.

1.3.17 BASELINE CUSTOMIZATIONS

The term “Baseline Customization(s)” shall mean the customizations to the Core Application, and related Documentation, provided by Contractor upon County’s election in order for the Solution to meet all of the System Requirements selected by County, including all Minimum Requirements and the Desired Features identified by County.

1.3.18 BASELINE INTERFACES

The term “Baseline Interface(s)” shall mean Interfaces, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.19 BOARD OF SUPERVISORS; BOARD

The terms “Board of Supervisors” and “Board” shall mean County’s Board of Supervisors, which is the governing body of County.

1.3.20 BUSINESS DAY

The term “Business Day” shall mean any day of eight (8) working hours from 8:00 a.m. to 5:00 p.m. Pacific Time (PT), Monday through Friday, excluding County observed holidays.

1.3.21 BUSINESS HOURS

The term “Business Hours” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.22 CENTER

The term “Center” shall mean any one of the County’s Community and Senior Centers.

1.3.23 CHANGE NOTICE

The term “Change Notice” shall have the meaning specified in Paragraph 4 (Changes Notices and Amendments).

1.3.24 CLIENT

The term “Client” shall mean all drivers, software, hardware and other tools provided by County as part of the System for the Solution.

1.3.25 CLIENT APPLICATION

The term “Client Application” shall mean the Application Software residing in the Client Environment

1.3.26 CLIENT ENVIRONMENT

The term “Client Environment” shall mean the client environment for the Solution, including Client Software and Client Hardware, provided by County in accordance with Contractor’s specifications.

1.3.27 CLIENT HARDWARE

The term “Client Hardware” shall mean the hardware and other equipment, including workstations, provided by County in accordance with Contractor’s specifications.

1.3.28 CLIENT SOFTWARE

The term “Client Software” shall mean the software and other products provided by County as part of the Client Environment in accordance with Contractor’s specifications, including operating software, and County Software.

1.3.29 COLA; COST OF LIVING ADJUSTMENT

The terms “COLA” and “Cost of Living Adjustment” shall have the meaning specified in Paragraph 8.7 (Cost of Living Adjustment).

1.3.30 CONFIDENTIAL INFORMATION

The term “Confidential Information” shall mean any data or information, in any format, and includes sensitive financial information, any County data and any other information otherwise deemed confidential by County or by Contractor or by applicable Federal, State or local law, as further specified in Paragraph 18 (Confidentiality and Security).

1.3.31 CONSULTING SERVICES

The term “Consulting Services” shall mean Professional Services that Contractor may provide following Go-Live upon County’s request therefor in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work).

1.3.32 CONTRACT SUM

The term “Contract Sum” shall mean the total monetary amount payable by County to Contractor hereunder, as set forth in Paragraph 8.1 (Maximum Contract Sum). The Contract Sum shall not be adjusted for any costs or expenses whatsoever of Contractor.

1.3.33 CONTRACTOR

The term “Contractor” shall have the meaning specified in the Recitals to the Agreement.

1.3.34 CONTRACTOR KEY PERSONNEL

The term “Contractor Key Personnel” shall have the meaning specified in Paragraph 3.1 (Contractor Administration).

1.3.35 CONTRACTOR KEY STAFF

The term “Contractor Key Staff” shall have the meaning specified in Paragraph 3.3 (Approval of Contractor’s Staff).

1.3.36 CONTRACTOR’S PROJECT DIRECTOR

The term “Contractor’s Project Director” shall have the meaning specified in Paragraph 3.2.1 (Contractor’s Project Director).

1.3.37 CONTRACTOR’S PROJECT EXECUTIVE

The term “Contractor’s Project Executive” shall be the person designated as such in Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement).

1.3.38 CONTRACTOR’S PROJECT MANAGER

The term “Contractor’s Project Manager” shall have the meaning specified in Paragraph 3.2.2 (Contractor’s Project Manager).

1.3.39 CORE APPLICATION

The term “Core Application” shall mean software and other tools, and related Documentation, provided by Contractor pursuant to this Agreement as part of the Baseline Application, which shall meet some or all of the System Requirements.

1.3.40 CORE ENHANCEMENTS

The term “Core Enhancement(s)” shall mean the enhancements made by Contractor to its Core Application following responding to the RFP in order to meet, among others, the Minimum Requirements, Security Requirements, and the Desired Features selected by County.

1.3.41 COTS

The term “COTS” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.42 COUNTY

The term “County” shall mean the County of Los Angeles, California, including its Department of Community and Senior Services.

1.3.43 COUNTY KEY PERSONNEL

The term “County Key Personnel” shall have the meaning specified in Paragraph 2.1 (County Administration).



1.3.44 COUNTY MATERIALS

The term “County Materials” shall have the meaning specified in Paragraph 16.1 (County Materials).

1.3.45 COUNTY SOFTWARE

The term “County Software” shall mean any County software installed and utilized by County in the System Environment.

1.3.46 COUNTY’S PROJECT DIRECTOR

The term “County’s Project Director” shall have the meaning specified in Paragraph 2.2.1 (County’s Project Director).

1.3.47 COUNTY’S PROJECT MANAGER

The term “County’s Project Manager” shall have the meaning specified in Paragraph 2.2.2 (County’s Project Manager).

1.3.48 CSS

The term “CSS” shall mean County’s Department of Community and Senior Services.

1.3.49 CRITICAL DEFICIENCY

The term “Critical Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.50 CUSTOMER SUPPORT

The term “Customer Support” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.51 CUSTOMIZATIONS

The term “Customization(s)” shall mean the Customizations to the Core Application, and related Documentation, which may be provided by Contractor during the term of the Agreement upon County’s election in order for the Solution to meet all of the System Requirements selected by County.

1.3.52 DATA MIGRATION

The term “Data Migration” shall mean Migration of Existing Data as part of Implementation Services, as further specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.53 DATA MIGRATION PLAN

The term “Data Migration Plan” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.54 DATA MIGRATION TEST

The term “Data Migration Test” shall mean the System Test to test Migration of Existing Data conducted by Contractor pursuant to Subtask 4.2 (Develop and Test Data Migration Methods) of Exhibit A (Statement of Work).

1.3.55 DATA WAREHOUSE

The term “Data Warehouse” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

- 1.3.56 DAY  
The term “Day” shall mean calendar day and not Business Day.
- 1.3.57 DEFICIENCY; DEFICIENCIES  
The terms “Deficiency” and “Deficiencies”, whether singular or plural, shall mean any of the following: any malfunction, error or defect in the design, development, implementation, materials, and/or workmanship; any failure to meet or comply with or deviation from System Requirements, Specifications, County approved deliverables, any published and/or mutually agreed upon standards or any other representations or warranties by Contractor under the Agreement regarding the Solution; and/or any other problem which results in the Solution, or any component thereof, not performing in compliance with the provisions of this Agreement, including but not limited to the Specifications and System Requirements.
- 1.3.58 DELIVERABLE; DELIVERABLE  
The terms “Deliverable” and “deliverable” shall mean items and/or services provided or to be provided by Contractor under this Agreement, including numbered Deliverable(s) in Exhibit A (Statement of Work).
- 1.3.59 DEPARTMENT  
The term “Department” shall mean County’s Department of Community and Senior Services.
- 1.3.60 DESIRED FEATURES  
The term “Desired Feature(s)” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work) .
- 1.3.61 DIRECTOR  
The term “Director” shall mean the Director of CSS.
- 1.3.62 DISASTER  
The term “Disaster” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.63 DISASTER RECOVERY PLAN  
The term “Disaster Recovery Plan” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.64 DISABLING DEVICE  
The term “Disabling Device” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.65 DISASTER RECOVERY  
The term “Disaster Recovery” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.66 DISASTER RECOVERY PLAN  
The term “Disaster Recovery Plan” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.67 DISPUTE RESOLUTION PROCEDURE

The term “Dispute Resolution Procedure” shall mean and refer to the provisions of Paragraph 53 (Dispute Resolution Procedure) describing the procedure for resolving the disputes arising under or with respect to this Agreement.

1.3.68 DOCUMENTATION

The term “Documentation” shall mean any and all written and electronic materials provided or made available by Contractor under this Agreement, including, but not limited to, documentation relating to software specifications and functions, training course materials, Specifications including System Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the Solution and/or applicable components.

1.3.69 DOWNTIME

The term “Downtime” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.70 DUE DATE

The term “Due Date” shall mean the due date for the completion of any Deliverable in the Project Schedule.

1.3.71 EFFECTIVE DATE

The term “Effective Date” shall mean the date of execution of this Agreement by County and the authorized representative(s) of Contractor.

1.3.72 EXISTING DATA

The term “Existing Data” shall mean the data of any of County’s existing systems to be migrated and/or converted by Contractor as part of Implementation Services in accordance with Exhibit A (Statement of Work).

1.3.73 EXTENDED TERM

As used herein, the term “Extended Term” shall have the meaning specified in Paragraph 7.2 (Extended Term).

1.3.74 EXTERNAL DATA

The term “External Data” shall mean the data of any of Interfaced Systems, exported from or migrated or imported into the Solution by an Interface or as part of Implementation Services.

1.3.75 FINAL ACCEPTANCE

The term “Final Acceptance” shall mean County’s written approval in accordance with the terms of this Agreement of Deliverable 8.4 (Final Acceptance) of Exhibit A (Statement of Work).

1.3.76 FINAL ACCEPTANCE DATE

The term “Final Acceptance Date” shall mean the date of Final Acceptance.

1.3.77 FINAL USER ACCEPTANCE TEST; FINAL UAT

The terms “Final User Acceptance Test” and “Final UAT” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work) .

1.3.78 FIRST LEVEL SUPPORT

The term “First Level Support” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.79 FIXED HOURLY RATE

The term “Fixed Hourly Rate” shall mean the hourly rate as specified in Exhibit B (Pricing Schedule) for Professional Services and Software Modifications, as applicable, that Contractor may provide following Go-Live upon County’s request therefor in the form of Optional Work.

1.3.80 GO-LIVE

The term “Go-Live” shall mean the point at which the Solution will be activated and in use in the live Production Environment by County, following County’s approval of Deliverable 8.3 (Go-Live) of Exhibit A (Statement of Work).

1.3.81 GO-LIVE DATE

The term “Desired Features” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work) .

1.3.82 IMPLEMENTATION COST

The term “Implementation Cost” shall mean the fees for the cost of Implementation Services, as specified in Exhibit B (Pricing Schedule).

1.3.83 IMPLEMENTATION PERIOD

The term “Implementation Period” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.84 IMPLEMENTATION SERVICES

The term “Implementation Services” mean System Environment setup, Application Software installation, Data Migration, System Tests, System Training and other Work to be provided by Contractor as part of the Solution implementation pursuant to Exhibit A (Statement of Work) up to and including Final Acceptance.

1.3.85 INITIAL TERM

The term “Initial Term” shall have the meaning specified in Paragraph 7.1 (Initial Term).

1.3.86 INTERFACED SYSTEM

The term “Interfaced System” shall mean any system interfaced with the Solution as part of the System, including where County Software resides.

1.3.87 INTERFACES

The term “Interface(s)” shall mean the set of software mechanisms, consisting of Baseline Interfaces and Additional Interfaces, which may be provided by Contractor under this Agreement, which allow the transfer of electronic data and/or software commands between computer systems, networks, applications or modules, and related Documentation.

1.3.88 KEY DELIVERABLE

The term “Key Deliverable” shall mean a Deliverable marked as such on Exhibit C (Project Schedule).

- 1.3.89 LICENSE  
The term “License” shall have the meaning specified in Paragraph 10.2 (License).
- 1.3.90 LOW DEFICIENCY  
The term “Low Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.91 MAINTENANCE FEES  
The term “Maintenance Fee(s)” shall mean and include the fees to be paid by County to Contractor for the provision of System Maintenance, including Maintenance Services and Support Services, in accordance with the terms of this Agreement, including Exhibit B (Pricing Schedule).
- 1.3.92 MAINTENANCE PERIOD  
The term “Maintenance Period” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).
- 1.3.93 MAINTENANCE SERVICES  
The term “Maintenance Services” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.94 MAJOR DEFICIENCY  
The term “Major Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.95 MAXIMUM FIXED PRICE  
The term “Maximum Fixed Price” shall mean the maximum amount to be paid by County to Contractor for any Optional Work approved by County to be provided by Contractor in accordance Paragraph 5.4 (Optional Work) of Exhibit A (Statement of Work).
- 1.3.96 MILESTONE  
The term “Milestone” shall mean a Deliverable marked as such on the Project Schedule or considered as a milestone by County.
- 1.3.97 MODERATE DEFICIENCY  
The term “Moderate Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.98 MONTHLY FEES  
The term “Monthly Fee(s)” shall mean 1/12<sup>th</sup> of the Annual Fee.
- 1.3.99 OFF-BUSINESS HOURS  
The term “Off-Business Hours” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).
- 1.3.100 OPERATING SOFTWARE  
The term “Operating Software” shall mean third party operating software that is part of Solution Software.

1.3.101 OPTIONAL WORK

The term “Optional Work” shall mean Application Modifications, Professional Services and/or Additional Products that may be provided by Contractor to County following Go-Live upon County’s request and approval in accordance with Task 10 (Optional Work) of Exhibit A (Statement of Work) and identified appropriately in Schedule B.1 (Optional Work).

1.3.102 PEAK PERIOD

The term “Peak Period” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.103 POOL DOLLARS

The term “Pool Dollars” shall mean the maximum amount allocated under this Agreement for the provision by Contractor of Optional Work, including Application Modifications, Professional Services and Additional Products approved by County in accordance with the terms of this Agreement.

1.3.104 PRICING SCHEDULE

The term “Pricing Schedule” shall mean prices for Deliverables, rates and other fees identified as Exhibit B (Pricing Schedule) with all Schedules thereto.

1.3.105 PRIORITY LEVEL

The term “Priority Level” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.106 PRODUCTION ENVIRONMENT

The term “Production Environment” shall mean the System Environment set up by Contractor for Production Use of the Solution as part of Implementation Services pursuant to Exhibit A (Statement of Work).

1.3.107 PRODUCTION USE

The term “Production Use” shall mean the actual use of the Solution in the Production Environment for the performance of County’s operations commencing upon Go-Live.

1.3.108 PROFESSIONAL SERVICES

The term “Professional Service(s)” shall mean Consulting Services and/or Additional Training that Contractor may provide following Go-Live upon County’s request therefor in the form of Optional Work in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work).

1.3.109 PROJECT PLAN

The term “Project Plan” shall mean the detailed plan for Implementation Services to be provided by Contractor to County, as further specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.110 PROJECT SCHEDULE

The term “Project Schedule” shall mean the agreed upon timeline for Implementation Services Tasks, Subtasks and Deliverables specified in Exhibit A (Statement of Work), as identified as Exhibit C (Project Schedule).

1.3.111 RELEASE CONDITIONS

As used herein, the term “Release Condition(s)” shall have the meaning set forth in Paragraph 10.3.3 (Source Code Release Conditions).

1.3.112 REPLACEMENT PRODUCT

The term “Replacement Product” shall have the meaning set forth in Paragraph 112.3 (Continuous Product Support).

1.3.113 REQUEST FOR PROPOSALS; RFP

The terms “Request for Proposals” and “RFP” shall mean County’s Request for Proposals incorporated into this Agreement as Exhibit L.

1.3.114 RESPONSE TIME

The terms “Response Time” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.115 RESPONSE TIME BASELINE

The term “Response Time Baseline” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.116 RESPONSE TIME DEFICIENCY

The term “Response Time Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.117 SANDBOX

The term “Sandbox” shall mean non-production System Environment set up by Contractor pursuant to Exhibit A (Statement of Work) for Training and testing, as further specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work)

1.3.118 SCHEDULED DOWNTIME

The term “Schedule Downtime” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.119 SCOPE OF WORK

The term “Scope of Work” shall mean the scope of Optional Work agreed by the parties to be provided as Optional Work.

1.3.120 SERVER APPLICATION

The term “Server Application” shall mean the Application Software residing in the Server Environment

1.3.121 SERVER ENVIRONMENT

The term “Server Environment” shall mean the architectural and operational environment of the Solution as part of the System, and related Documentation, including Server Software and Server Hardware.

1.3.122 SERVER HARDWARE

The term “Server Hardware” shall mean the hardware and other equipment, and related Documentation, including networking, provided by Contractor as part of the Solution.

1.3.123 SERVER SOFTWARE

The term “Server Software” shall mean the software and other products provided by Contractor as part of the Server Environment, including operating software and database software.

1.3.124 SERVICE CREDITS

The term “Service Credits” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.125 SERVICE LEVEL AGREEMENT

The term “Service Level Agreement” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.126 SERVICES

The term “Services” shall mean Implementation Services, Maintenance Services, Support Services and any services that may be part of Optional Work provided by Contractor under this Agreement.

1.3.127 SEVERE DEFICIENCY

The term “Severe Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.128 SOFTWARE MODIFICATIONS

The term “Software Modification(s)” shall mean Additional Customizations and Additional Interfaces, and related Documentation, that Contractor may provide following Go-Live upon County’s request therefor as Application Modifications in accordance with Paragraph 5.4 (Optional Work) and Task 10 (Optional Work) of Exhibit A (Statement of Work), which will update Schedule B.1 (Optional Work).

1.3.129 SOLUTION

The term “Solution” shall mean the combination of the software, hardware, hosting services, maintenance, technical support and other work, including all Application Software, Solution Data, Server Environment, Third Party Products and related Services, provided by Contractor to County in accordance with the terms of this Agreement.

1.3.130 SOLUTION DATA

The term “Solution Data” shall mean the data utilized by the Solution.

1.3.131 SOLUTION SOFTWARE

The term “Solution Software” shall mean all Application Software, Server Software and Updates thereto, and related Documentation, provided by Contractor to County as part of the Solution in accordance with the terms of this Agreement.

1.3.132 SOURCE CODE

The term “Source Code” shall mean the source code for Application Software, to the extent available, developed for or licensed by Contractor to County under this Agreement, including Baseline Application, Application Modifications and Interfaces, together with all Documentation and other proprietary information related to such source code.



1.3.133 SOURCE CODE ESCROW AGREEMENT

As used herein, the term “Source Code Escrow Agreement” shall mean an agreement between Contractor and a third party Source Code escrow agent, including all addenda, amendments and modifications thereto, for depositing the Source Code in accordance with Paragraph 10.3.1 (Source Code Escrow), incorporated into this Agreement by reference as Exhibit K (Source Code Escrow Agreement).

1.3.134 SPECIFICATIONS

The term “Specification(s)” shall mean any or all of the following, as applicable:

- (1) All specifications, requirements and standards set forth in Attachment A.1 (System Requirements) and included as Deliverables in Exhibit A (Statement of Work).
- (2) All System Performance Requirements and standards set forth in this Agreement, including, but not limited to, requirements for System Availability and Response Time identified in Exhibit D (Service Level Agreement).
- (3) The Documentation, to the extent not inconsistent with any of the foregoing in this definition.
- (4) All specifications identified as such by Contractor, including, but not limited to, the Project Schedule and the Project Plan, but only to the extent: (i) not inconsistent with any of the foregoing in this Paragraph; and (ii) acceptable to County in its sole discretion.
- (5) All System Environment requirements and certifications provided by Contractor in accordance with this Agreement with respect to the Solution.
- (6) All written and/or electronic materials furnished by or through Contractor regarding the Application Software or the Solution, including functionality, features, capacity, availability, response times, accuracy or any other performance or other Solution criteria or any element of the Solution or any Solution component.

1.3.135 STATE

The term “State” means the State of California.

1.3.136 STATEMENT OF WORK; SOW

The terms “Statement of Work” and “SOW” shall mean the Work to be provided by Contractor pursuant to this Agreement identified in terms of Tasks, Subtasks and Deliverables in Exhibit A (Statement of Work).

1.3.137 SUPPORT HOURS

The term “Support Hours” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.138 SUPPORT SERVICES

The term “Support Services” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.139 SYSTEM

The term “System” shall mean the infrastructure of the Solution, including but not limited to the Solution, the Client, all Interfaced Systems and any Optional Work that may be provided by Contractor to County following Go-Live upon County’s request in accordance with the terms of this Agreement.

1.3.140 SYSTEM AVAILABILITY

The term “System Availability” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.141 SYSTEM AVAILABILITY DEFICIENCY

The term “System Availability Deficiency” shall mean the System not meeting the System Availability requirements as specified in Exhibit D (Service Level Agreement).

1.3.142 SYSTEM ENVIRONMENT

The term “System Environment” shall mean the architectural and operational environment of comprising the System, and related Documentation, including Server Environment and Client Environment, as further specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.143 SYSTEM MAINTENANCE

The term “System Maintenance” shall mean Maintenance Services and Support Services provided by Contractor in accordance with Exhibit D (Service Level Agreement), as further specified in Paragraph 5.3 (System Maintenance).

1.3.144 SYSTEM PERFORMANCE

The term “System Performance” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.145 SYSTEM PERFORMANCE DEFICIENCY

The term “System Performance Deficiency” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.146 SYSTEM PERFORMANCE REQUIREMENTS

The term “System Performance Requirements” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.147 SYSTEM REQUIREMENTS

The term “System Requirements” shall mean business, operational, technical and/or functional requirements relating to the operation or utilization of the System, as specified in Attachment A.1 (System Requirements).

1.3.148 SYSTEM TEST

The term “System Test” shall mean shall mean any of the tests conducted by County or Contractor, as applicable, under Exhibit A (Statement of Work), including but not limited to User Acceptance Test, Volume Test and Data Migration Test.

1.3.149 SYSTEM TRAINING

The term “System Training” shall have the meaning as specified in Task 5 (System Training) of Exhibit A (Statement of Work).

1.3.150 TASK; TASK; SUBTASK; SUBTASK

The terms “Task”, “task”, “Subtask” and “subtask” shall mean one of the areas of work to be performed under this Agreement, including those identified as numbered Tasks and Subtasks in Exhibit A (Statement of Work).

1.3.151 THIRD PARTY APPLICATION

The term “Third Party Application” shall mean the portion of the Application Software provided by Contractor to County under this Agreement that is not proprietary to Contractor.

1.3.152 THIRD PARTY PRODUCTS

The term “Third Party Product(s)” shall mean any products of third parties provided by Contractor to County under this Agreement in the form of Additional Products as part of the Solution, which are neither Application Software nor Server Environment, but may include Third Party Software and Additional Hardware.

1.3.153 THIRD PARTY SOFTWARE

The term “Third Party Software” shall mean any software of third parties provided by Contractor to County under this Agreement as part of the Solution, including Third Party Application and Server Software.

1.3.154 TOTAL MONTHLY TIME

The term “Total Monthly Time” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.155 TRAINING

The term “Training” shall mean training relating to the Solution to be provided by Contractor pursuant to this Agreement, including initial System Training and Additional Training that County may acquire as part of Professional Services.

1.3.156 TRAINING PLAN

The term “Training Plan” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.157 UNSCHEDULED DOWNTIME

The term “Unscheduled Downtime” shall have the meaning specified in Section 2.2 (Definitions) of Exhibit D (Service Level Agreement).

1.3.158 USER ACCEPTANCE TEST; UAT

The terms “User Acceptance Test” and “UAT” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.159 UAT PLAN

The term “UAT Plan” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.160 UPDATE(S)

The term “Update(s)” shall mean and include any additions to and/or replacements to the Solution Software, available or made available subsequent to Go-Live, and shall include all Application Software performance and functionality enhancement releases, new Version Releases, Server Software upgrades, improvements, interim updates, including fixes and patches, Deficiency corrections, and modifications to the Application Software consisting of Server Application and Client Application, including but not limited to those required for the Solution to remain in compliance with applicable Federal and State laws and regulations and the terms of this Agreement, provided by Contractor in accordance with Exhibit D (Service Level Agreement), with all Schedules thereto.

1.3.161 USER

The term “User” shall mean any person authorized by County to access or use the System pursuant to this Agreement.

1.3.162 USER ACCEPTANCE TEST

The term “User Acceptance Test” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.163 VENDOR

The term “Vendor” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.164 VERSION RELEASE

The term “Versions Release” shall mean Contractor’s Application Software major version upgrade which may contain new software functionalities and features and/or system compatibilities.

1.3.165 VOLUME TEST

The term “Volume Test” shall have the meaning specified in Section 1.4 (Definitions) of Exhibit A (Statement of Work).

1.3.166 WARRANTY PERIOD

The term “Warranty Period” shall have the meaning specified in Paragraph 12.1 (System Warranties).

1.3.167 WORK

The term “Work” shall mean any and all tasks, subtasks, deliverables, goods, services and other work provided, or to be provided, by or on behalf of Contractor pursuant to this Agreement, including Solution components, Implementation Services, System Maintenance and Optional Work.

1.3.168 WORK PRODUCT

The term “Work Product” shall have the meaning specified in Paragraph 10.1.4 (Work Product).

**2. ADMINISTRATION OF AGREEMENT – COUNTY**

**2.1 COUNTY ADMINISTRATION**

All persons administering this Agreement on behalf of County and identified in this Paragraph 2 below (hereinafter “County Key Personnel”) are listed in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement). Unless otherwise specified, reference to each of the persons listed in such Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement) shall also include his/her designee. County will notify Contractor in writing of any change in the names and/or addresses of County Key Personnel.

No member of County Key Personnel is authorized to make any changes in any of the terms and conditions of this Agreement other than those specifically authorized under Paragraph 4 (Changes Notices and Amendments).

## 2.2 COUNTY KEY PERSONNEL

### 2.2.1 COUNTY'S PROJECT DIRECTOR

County's Project Director will be responsible for ensuring that the objectives of this Agreement are met. County's Project Director will have the right at all times to inspect any and all Work provided by or on behalf of Contractor. Unless specified otherwise, County's Project Director shall also include a designee.

### 2.2.2 COUNTY'S PROJECT MANAGER

County's Project Manager will be responsible for ensuring that the technical, business and operational standards and requirements of this Agreement are met. County's Project Manager will interface with Contractor's Project Manager on a regular basis. County's Project Manager will report to County's Project Director regarding Contractor's performance with respect to technical standards and functional performance. Unless specified otherwise, County's Project Manager shall be the designee of County's Project Director and shall include his/her own designee.

## 2.3 COUNTY PERSONNEL

All County personnel assigned to this Agreement shall be under the exclusive supervision of County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of County. Contractor hereby represents that its price, Project Schedule and performance hereunder are based solely on the work of Contractor's personnel, except as otherwise expressly provided in this Agreement.

## 2.4 APPROVAL OF WORK

All Tasks, Subtasks, Deliverables, including Key Deliverables, and other Work provided by Contractor under this Agreement must have the written approval of County's Project Manager as described in this Paragraph 2.4. In no event shall County be liable or responsible for any payment prior to such written approval. Furthermore, County reserves the right to reject any Work not approved by County.

## 3. **ADMINISTRATION OF AGREEMENT – CONTRACTOR**

### 3.1 CONTRACTOR ADMINISTRATION

All persons administering this Agreement on behalf of Contractor and identified in this Paragraph 3 below (hereinafter "Contractor Key Personnel") are listed in Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement). All staff employed by and/or behalf of Contractor, including the persons listed in such Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement), shall be adults who are fully fluent in both spoken and written English. Contractor shall notify County in writing of any change in the names and/or addresses of Contractor Key Personnel.

### 3.2 CONTRACTOR KEY PERSONNEL

#### 3.2.1 CONTRACTOR'S PROJECT DIRECTOR

Contractor's Project Director shall be responsible for Contractor's performance of all its tasks, subtasks and other Work and ensuring Contractor's compliance with this Agreement. Contractor's Project Director shall meet and confer with County's Project Director as required by County. Such meetings shall be conducted via teleconference or at a time and place agreed to by County's Project Director and Contractor's Project Director.

### 3.2.2 CONTRACTOR’S PROJECT MANAGER

Contractor’s Project Manager shall be responsible for Contractor’s day-to-day activities as related to this Agreement and for reporting to County in the manner set forth in Paragraph 3.5 (Reports by Contractor). Contractor’s Project Manager shall interface with County’s Project Manager on a regular basis to review project progress and discuss project coordination. Such meetings shall be conducted via teleconference or at a time and place agreed to by County’s Project Director and Contractor’s Project Director.

### 3.3 APPROVAL OF CONTRACTOR’S STAFF

- 3.3.1 In fulfillment of its responsibilities under this Agreement, Contractor shall utilize, and permit utilization of, only staff fully trained and experienced, and as appropriate, licensed or certified in the technology, trades, tasks and subtasks required by this Agreement. Contractor shall supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.
- 3.3.2 County shall have the right to approve or disapprove each member, or proposed member, of Contractor’s Project Director, Contractor’s Project Manager and any staff providing Training or on-site Work to County under this Agreement or with access to any of County’s sensitive information (hereinafter “Contractor Key Staff”) prior to and during their performance of any Work hereunder, as well as so approving or disapproving any proposed deletions from or other changes in such Contractor Key Staff. County’s Project Manager, in his/her reasonable discretion, may require replacement of any member of the Contractor Key Staff performing, or offering to perform, Work hereunder. Contractor shall provide County with a resume of each such proposed initial Contractor Key Staff member and a proposed substitute and an opportunity to interview such person prior to his/her performance of any Work hereunder.
- 3.3.3 In addition, Contractor shall provide to County’s Project Director an executed Confidentiality and Assignment Agreement (Exhibit F) for each member of the Contractor Key Staff performing Work under this Agreement on or immediately after the Effective Date, but in no event later than the date such member of the Contractor Key Staff first performs Work under this Agreement.
- 3.3.4 Contractor shall, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting the Contractor Key Staff. Contractor shall promptly fill any Contractor Key Staff vacancy with personnel having qualifications at least equivalent to those of the Contractor Key Staff member(s) being replaced.
- 3.3.5 In the event Contractor should ever need to remove any member of the Contractor Key Staff from performing Work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, and shall work with County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Should County be dissatisfied with any member of the Contractor Key Staff during the term of the Agreement, Contractor shall replace such person with another to County’s satisfaction.
- 3.3.6 Contractor shall supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.

### 3.4 BACKGROUND AND SECURITY INVESTIGATIONS

- 3.4.1 All Contractor staff performing Work under this Agreement shall undergo and pass, to the satisfaction of County, a background investigation as a condition of beginning and

continuing Work under this Agreement. Contractor may conduct its own background checks, provided that they comply with County's requirements, as acknowledged by County's Project Manager or designee. County acknowledges that Contractor has provided information detailing Contractor's background check procedures and that the same are acceptable hereunder. If Contractor's procedures for background checks materially change, Contractor shall provide County with revised procedures for County's acceptance and acknowledgment thereof. All fees associated with obtaining the background information shall be borne by Contractor, regardless of whether Contractor's staff passes or fails the background clearance investigation.

3.4.2 County may immediately, in its sole discretion, deny or terminate facility access to any Contractor's staff, including subcontractor staff, who do not pass such background investigation(s) to the satisfaction of County and/or whose background or conduct is incompatible with County's facility access.

3.4.3 Disqualification, if any, of Contractor's staff, including subcontractor staff, pursuant to this Paragraph 3.4 shall not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Agreement.

### 3.5 REPORTS BY CONTRACTOR

In addition to any reports required elsewhere pursuant to this Agreement including the Statement of Work, in order to control expenditures and to ensure the reporting of all Work provided by Contractor, Contractor shall provide to County's Project Manager as frequently as requested by County's Project Manager, but in no event more frequently than weekly, written reports which shall include, at a minimum, the following information:

- (1) Period covered by the report;
- (2) Overview of the reporting period;
- (3) Tasks, subtasks, deliverables, goods, services and other Work scheduled for the reporting period which were completed;
- (4) Tasks, subtasks, deliverables, goods, services and other Work scheduled the reporting period which were not completed;
- (5) Tasks, subtasks, deliverables, goods, services and other Work not scheduled for but completed in the reporting period.
- (6) Tasks, subtasks, deliverables, goods, services and other Work scheduled to be completed in the next reporting period;
- (7) Issues resolved and to be resolved;
- (8) Summary of project status as of reporting date; and
- (9) Any other information which County may from time-to-time require.

### 3.6 RULES AND REGULATIONS

3.6.1 During the time when Contractor's employees, subcontractors or agents are at County facilities, such persons shall be subject to the applicable rules and regulations of County facilities. It is the responsibility of Contractor to acquaint such persons, who are to provide Work, with such rules and regulations. In the event that County determines that an employee, subcontractor or agent of Contractor has violated any applicable rule or regulation, County shall notify Contractor, and Contractor shall undertake such remedial or disciplinary measures as Contractor determines appropriate. If the problem is not thereby corrected, then

Contractor shall permanently withdraw its employee, subcontractor or agent from the provision of Work upon receipt of written notice from County that: (i) such employee, subcontractor or agent has violated such rules or regulations; or (ii) such employee's, subcontractor's or agent's actions, while on County premises, indicate that the employee, subcontractor or agent may adversely affect the provision of Work. Upon removal of any employee, subcontractor or agent, Contractor shall immediately replace the employee, subcontractor or agent and continue uninterrupted Work hereunder.

- 3.6.2 All Contractor employees who are receiving public assistance shall meet their reporting responsibilities to County. All of Contractor's employees shall maintain the confidentiality of all records obtained from County under the Agreement in accordance with all applicable County, State and federal laws, ordinances, regulations and directives relating to confidentiality, under state law, including without limitations, Welfare & Institutions Code, Section 10850 et seq. Further, such Contractor's employees shall not have any access to County's records of friends, relatives, business relations, personal acquaintances, tenants, or any other individuals whose relationship could reasonably influence his conduct or performance on the job. Limiting access to these records includes not allowing individuals access to information that could be used to determine eligibility for public assistance. Further, Contractor's employees shall not be able to transmit computer data, nor be able to obtain physical possession of case documents.

### 3.7 CONTRACTOR'S STAFF IDENTIFICATION

- 3.7.1 Contractor, at Contractor's cost, shall provide each member of the staff assigned to this Agreement with a visible photo identification badge in accordance with County's specifications. Identification badge specifications may change at the sole discretion of County, and Contractor will be provided new specifications as required. The format and content of the badge is subject to County's approval prior to Contractor implementing the use of the badge. Contractor's staff, while on duty or when entering a County facility or its grounds, shall prominently display the photo identification badge on the upper part of the body.
- 3.7.2 Contractor shall notify County within one (1) Business Day when staff is terminated from work under this Agreement. Contractor is responsible to retrieve and immediately destroy the staff's County-specified photo identification badge at the time of removal from Work under this Agreement.

If County requests the removal of Contractor's staff, Contractor is responsible to retrieve and immediately destroy Contractor staff's County photo identification badge at the time of removal from work under this Agreement.

## 4. **CHANGES NOTICES AND AMENDMENTS**

### 4.1 GENERAL

No representative of either County or Contractor, including those named in this Agreement, is authorized to make any changes in any of the terms, obligations or conditions of this Agreement, except through the procedures set forth in this Paragraph 4. County reserves the right to change any portion of the Work required under this Agreement and to any other provisions of this Agreement. All such changes shall be accomplished only as provided in this Paragraph 4.



#### 4.2 CHANGE NOTICES

For any change requested by County which does not affect the scope of Work, term, payments, or any term or condition of this Agreement, including expenditure of Pool Dollars, a written notice of such change (hereinafter “Change Notice”) shall be prepared and executed by County’s Project Director.

#### 4.3 AMENDMENTS

Except as otherwise provided in this Agreement, for any change requested by County which affects the scope of Work, term, payments, or any term or condition included in this Agreement, a negotiated written Amendment to this Agreement shall be prepared and executed by each of County’s Board of Supervisors and Contractor’s authorized representative(s).

#### 4.4 PROJECT SCHEDULE

As a result of completion of Deliverable 1.1 (Project Plan) of Exhibit A (Statement of Work), a Project Schedule will be derived for the Work relating to Implementation Services as described in Exhibit A (Statement Work), which shall update Exhibit C (Project Schedule). Changes to the Project Schedule shall be made upon mutual agreement, in writing, by County’s Project Director and Contractor’s Project Director by Change Notice or otherwise, provided that County’s Project Director’s and Contractor’s Project Director’s agreement to alter the Project Schedule shall not prejudice either party’s right to claim that such alterations constitute an Amendment to this Agreement that shall be governed by the terms of Paragraph 4.3 (Amendments) above.

#### 4.5 EXTENSIONS OF TIME

Notwithstanding any other provision of this Paragraph 4, to the extent that extensions of time for Contractor performance do not impact either the scope of Work or cost of this Agreement, County’s Project Director, in his/her sole discretion, may grant Contractor extensions of time in writing for the work listed in Exhibit C (Project Schedule), provided such extensions shall not exceed a total of six (6) months beyond Final Acceptance.

#### 4.6 BOARD ORDERS

Notwithstanding any other provision of this Paragraph 4 or Paragraph 21 (Termination for Convenience), Director shall take all appropriate action to carry out any orders of County’s Board of Supervisors relating to this Agreement, which directly impact the Solution or the budget allocated the Solution or the Agreement, and, for this purpose, Director is authorized to: (i) issue written notice(s) of partial or total termination of this Agreement pursuant to Paragraph 21 (Termination for Convenience) without further action by County’s Board of Supervisors and/or (ii) prepare and execute Amendment(s) to this Agreement, which shall reduce the scope of Work and the Contract Sum without further action by County’s Board of Supervisors.

##### 4.6.1 Such notices of partial or total termination shall be authorized under the following conditions:

- (1) Notices shall be in compliance with all applicable Federal, State and County laws, rules, regulations and ordinances, and publicly known guidelines and directives.
- (2) Director shall obtain the approval of County Counsel for any notice.
- (3) Director shall file a copy of all notices with the Executive Office of County’s Board of

Supervisors and County's Chief Executive Office within thirty (30) days after execution of each notice.

4.6.2 Such Amendments shall be authorized under the following conditions:

- (1) Amendments shall be in compliance with all applicable Federal, State, and County laws, rules, regulations and ordinances, and publicly known guidelines and directives.
- (2) County's Board of Supervisors has appropriated sufficient funds for purposes of such Amendments and this Agreement.
- (3) Director shall obtain the approval of County Counsel for any Amendment.
- (4) Director shall file a copy of all Amendments with the Executive Office of County's Board of Supervisors and County's Chief Executive Office within fifteen (15) days after execution of each Amendment.

#### 4.7 FACSIMILE

Except for the parties' initial signatures to this Agreement, which must be provided in "original" form and not by facsimile, County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officials of each party, when appearing in appropriate places on the Change Notices prepared pursuant to this Paragraph 4 and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices to this Agreement, such that the parties need not follow up facsimile transmissions of such documents by subsequent (non-facsimile) transmissions of "original" versions of such documents.

### 5. **SCOPE OF WORK**

In exchange for County's payment to Contractor under the Agreement and invoiced by Contractor, Contractor shall (a) on a timely basis provide, complete, deliver and implement all Work set forth in this Agreement, including Exhibit A (Statement of Work) and Exhibit D (Service Level Agreement), including but not limited to components of the Solution, Implementation Services, System Maintenance and any Optional Work; and (b) grant to County a limited License to the Solution Software, as specified in Paragraph 10.2 (License). Contractor shall perform all such tasks, subtasks, deliverables, goods, services and other Work in accordance with Exhibit A (Statement of Work) with all Attachments thereto and Exhibit D (Service Level Agreement) with all Schedules thereto at the applicable rates and prices specified in Exhibit B (Pricing Schedule) with all Schedules thereto.

#### 5.1 SOLUTION COMPONENTS

Contractor shall provide the License to all Solution Software, including Application Software and Server Software, and all Server Environment components, including Server Software and Server Hardware, in order to meet the System Requirements, all in accordance with the provisions of Paragraph 10 (System Ownership and License) and the Agreement. In addition, Contractor shall certify that the Client Environment provided by County in accordance with Contractor's specifications is capable of meeting the System Performance Requirements, as provided in Exhibit A (Statement of Work), including Attachment A.1 (System Requirements).

## 5.2 IMPLEMENTATION SERVICES

Contractor shall provide Implementation Services, including System setup, installation, testing, training and other services through Final Acceptance of the Solution, as required for successful implementation of the Solution, as specified in Exhibit A (Statement of Work).

## 5.3 SYSTEM MAINTENANCE

Contractor shall provide to County services relating to the hosting, maintenance and support of the Solution, including Solution Data extraction, Maintenance Services and Support Services, as provided in, and in accordance with, this Agreement, including Exhibit D (Service Level Agreement) and Task 9 (System Maintenance) of Exhibit A (Statement of Work) (hereinafter “System Maintenance”). System Maintenance obligations shall commence upon Go-Live and shall continue through the term of this Agreement.

## 5.4 OPTIONAL WORK

Upon the written request of County’s Project Director or designee following Go-Live and mutual agreement, Contractor shall provide to County Optional Work using Pool Dollars, including Application Modifications, Professional Services and/or Additional Products, in accordance with Task 10 (Optional Work) of Exhibit A (Statement of Work) at the applicable pricing terms set forth in Exhibit B (Pricing Schedule). Application Modifications shall only include those products and services relating to the requirements not reflected on the Effective Date in the Specifications, including System Requirements, as determined by County’s Project Director or designee.

Upon County’s request and Contractor’s agreement to provide the Optional Work, Contractor shall provide to County within ten (10) Business Days of such request, or such longer period as agreed to by the parties, a proposed Scope of Work and a quote for a Maximum Fixed Price calculated in accordance with the applicable pricing terms set forth in Exhibit B (Pricing Schedule). Contractor’s quotation shall be valid for at least ninety (90) days from submission. Contractor shall commence the Optional Work following agreement by the parties with respect to such Scope of Work and the Maximum Fixed Price. Upon completion by Contractor, and approval by County in accordance with the terms of this Agreement, of such Optional Work, Schedule B.1 (Optional Work) shall be updated accordingly to add such items of Optional Work by Change Notice executed in accordance with Paragraph 4 (Changes Notices and Amendments).

## 5.5 STANDARD OF SERVICES

Contractor’s services and other Work required by this Agreement shall during the term of the Agreement conform to reasonable commercial standards as they exist in Contractor’s profession or field of practice. If Contractor’s services and other work provided under this Agreement fail to conform to such standards, upon notice from County specifying the failure of performance, Contractor shall, at Contractor’s sole expense, provide the applicable remedy as specified in this Agreement, including Exhibit A (Statement of Work) and Exhibit D (Service Level Agreement). Contractor shall, at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor or malfunctions of the Solution or by any other tools introduced by Contractor into the System for the purpose of performing services or other Work under this Agreement or otherwise.

## 5.6 UNAPPROVED WORK

If Contractor provides any tasks, subtasks, deliverables, goods, services or other work to County other than those specified in this Agreement, or if Contractor provides such items

requiring County's prior written approval without first having obtained such written approval, the same shall be deemed to be a gratuitous effort on the part of Contractor, and Contractor shall have no claim whatsoever against County therefor.

## **6. PROJECT SCHEDULE**

### **6.1 PROJECT PLAN**

Contractor shall implement the Solution in accordance with the Project Schedule, set forth in Exhibit C (Project Schedule), based upon the Project Plan developed and delivered pursuant to Subtask 1.1 (Develop Project Plan) of Exhibit A (Statement of Work). The Project Schedule shall, at a minimum, include the following items:

- (1) Deliverable Number;
- (2) Description;
- (3) Due Date;
- (4) Milestone/Key Deliverables Number;
- (5) Associated Deliverable; and
- (6) Any other items reasonably required by County under this Agreement.

### **6.2 KEY DELIVERABLES AND MILESTONES**

Exhibit C (Project Schedule) shall specify certain Deliverables as Key Deliverables and/or Milestones, as determined by County. A Key Deliverable or a Milestone shall be deemed completed for purposes of this Paragraph 6.2 on the earliest date that all of the tasks, subtasks, deliverables, goods, services and other Work required for completion of such Key Deliverable or Milestone are completed and delivered to County, provided that all of such Work required for completion of such Key Deliverable or Milestone are thereafter approved in writing by County pursuant to Paragraph 2.4 (Approval of Work) without prior rejection by County or significant delay in County's approval thereof, which delay is the result of Contractor's failure to deliver such tasks, subtasks, deliverables, goods, services and other Work in accordance with the terms hereof. The determination of whether each Key Deliverable or Milestone has been so completed and so approved, and of the date upon which such Key Deliverable or Milestone was completed, shall be made by County's Project Director as soon as practicable in accordance with Paragraph 2.4 (Approval of Work) after County is informed by Contractor that such Key Deliverable or Milestone has been completed and is given all the necessary information, data and documentation to verify such completion.

## **7. TERM**

### **7.1 INITIAL TERM**

The term of this Agreement shall commence upon the Effective Date and shall expire three (3) years following the Final Acceptance of the Solution, unless sooner terminated or extended, in whole or in part, as provided in this Agreement (hereinafter "Initial Term").

### **7.2 EXTENDED TERM**

At the end of the Initial Term, County may, at its sole option, extend this Agreement for up to two (2) additional consecutive one (1) year terms (hereinafter "Extended Term") one (1) year at a time, subject to, among others, County's right to terminate earlier for convenience, non-appropriation of funds, default of Contractor, substandard performance of Contractor,

non-responsibility of Contractor and any other term or condition of the Agreement providing for early termination of the Agreement by County. If County elects not to exercise its option to extend at the end of the Initial Term, or the Extended Term, as applicable, the remaining option(s) shall automatically lapse. County shall be deemed to have exercised its extension option(s) automatically, without further act, unless, no later than thirty (30) days prior to the expiration of the Initial Term or the Extended Term, as applicable, County notifies in writing Contractor that it elects not to extend the Agreement pursuant to this Paragraph 7.

### 7.3 DEFINITION OF TERM

As used throughout this Agreement, the word “term” when referring to the term of the Agreement shall include the Initial Term and the Extended Term, to the extent County exercises any of its options pursuant to this Paragraph 7.

### 7.4 NOTICE OF EXPIRATION

Contractor shall notify County when this Agreement is within six (6) months from the expiration of the Initial Term. Upon occurrence of this event, Contractor shall send written notification to County’s Project Director at the address set forth in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

## 8. CONTRACT SUM

### 8.1 MAXIMUM CONTRACT SUM

The Contract Sum under this Agreement shall be the total monetary amount payable by County to Contractor for supplying all the tasks, subtasks, deliverables, goods, services and other Work required or requested by County under this Agreement. All Work completed by Contractor must be approved in writing by County in accordance with Paragraph 2.4 (Approval of Work). If County does not approve work in writing, no payment shall be due Contractor for that Work. The Contract Sum, including all applicable taxes, authorized by County hereunder shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) as further detailed in Exhibit B (Pricing Schedule), unless the Contract Sum is modified pursuant to a duly approved Amendment to this Agreement by County’s and Contractor’s authorized representative(s) pursuant to Paragraph 4 (Changes Notices and Amendments). The Contract Sum under this Agreement shall cover the authorized payments for all Solution components provided by Contractor, Implementation Services, System Maintenance and any Optional Work.

Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the Contract Sum, including the Pool Dollars expenditures, authorized for this Agreement. Upon occurrence of this event, Contractor shall provide written notification to County’s Project Director at the address set forth in Section 1 (County Key Personnel) in Exhibit E (Administration of Agreement). Notwithstanding the foregoing, Contractor’s failure to provide such notification shall not constitute a material breach of this Agreement.

### 8.2 SOLUTION IMPLEMENTATION

#### 8.2.1 IMPLEMENTATION COST

Contractor shall provide the License for all Solution Software, including Application Software and Server Software, and Implementation Services, including Baseline Interfaces and Baseline Customizations, in accordance with Exhibit A (Statement of Work), with all Attachments thereto, and the Base Agreement in exchange for County’s payment of the

applicable Implementation Cost. The Implementation Cost shall include all applicable fees associated with the implementation of Solution together with all required System Training, including all tasks, subtasks, deliverables, goods, services and other Work set forth in such Exhibit A (Statement of Work), as specified in Exhibit B (Pricing Schedule). The Implementation Cost shall not exceed the amount specified in such Exhibit B (Pricing Schedule).

#### 8.2.2 CREDITS TO COUNTY

Contractor agrees that delayed performance by Contractor will cause damages to County, which are uncertain and would be impracticable or extremely difficult to ascertain in advance. Contractor further agrees that, in conformity with California Civil Code Section 1671, Contractor shall be liable to County for liquidated damages in the form of credits, as specified in Paragraph 8.2.2 below, as a fair and reasonable estimate of such damages. Any amount of such damages is not and shall not be construed as penalties and, when assessed, will be deducted from County's payment that is due.

For each and every occasion upon which a Deliverable marked on the applicable Exhibit C (Project Schedule) as "Key" (hereinafter "Key Deliverable") has not been completed by Contractor within fifteen (15) days after the date scheduled for completion thereof as set forth in such Exhibit C (Project Schedule) (hereinafter for each Key Deliverable "Due Date"), other than as a result of delays caused by acts or omissions of County, and unless otherwise approved in writing by County's Project Manager or designee in his/her discretion, County shall be entitled to receive credit against any or all amounts due to Contractor under this Agreement or otherwise in the total amount of Five Hundred Dollars(\$500) for each day after the Due Date that the Key Deliverable is not completed as a fair and reasonable estimate of the harm caused by the delay. All of the foregoing credits shall apply separately, and cumulatively, to each Key Deliverable in the Project Schedule. A determination whether County shall assess credits due to it pursuant to this Paragraph 8.2.2 shall be made by County's Project Manager in his/her reasonable discretion.

A Deliverable shall be deemed completed for purposes of this Paragraph 8.2.2 and Paragraph 8.2.3 (Termination) on the earliest date that all of the tasks, subtasks, deliverables, goods, services and other Work required for the completion of such Deliverable are completed and delivered to County, provided that all of such tasks, subtasks, deliverables, goods, services and other Work required for the completion of such Deliverable are thereafter approved in writing by County pursuant to Paragraph 2.4 (Approval of Work) without prior rejection by County or significant delay in County's approval thereof, which delay is the result of Contractor's failure to deliver such tasks, subtasks, deliverables, goods, services and other Work in accordance with the terms hereof. For purposes of this Paragraph 8.2.2 and Paragraph 8.2.3 (Termination), the determination of whether a Deliverable has been so completed and is so approved, and of the date upon which such Deliverable was completed, shall be made by County's Project Director as soon as practicable after County is informed by Contractor that such Deliverable has been completed and is given all the necessary information, data and documentation to verify such completion.

#### 8.2.3 TERMINATION

In addition to the foregoing provisions of Paragraph 8.2.2 (Credits to County), if any Key Deliverable is not completed within thirty (30) days after the applicable Due Date, and thereafter approved in writing by County pursuant to Paragraph 2.4 (Approval of Work), other than as a result of delays caused by acts or omissions of County as determined by

Director in his/her reasonable judgment, and unless County's Project Director and Contractor's Project Director have otherwise agreed in writing prior to such date scheduled for completion, then County may, upon notice to Contractor, terminate this Agreement for default in accordance with Paragraph 20 (Termination for Default) or for convenience in accordance with Paragraph 21 (Termination for Convenience), as determined in the sole discretion of County, subject to the cure provisions set forth in Paragraph 20 (Termination for Default).

### 8.3 SYSTEM MAINTENANCE

Contractor shall, during the term of this Agreement, provide to County System Maintenance services, including Maintenance Services and Support Services, in exchange for County's payment of the applicable Maintenance Fees set forth in Exhibit B (Pricing Schedule), with all Schedules thereto. Unless otherwise agreed to by the parties, Maintenance Fees will be paid by County to Contractor monthly in arrears for Maintenance Periods commencing upon Final Acceptance and shall not exceed the amounts specified in Exhibit B (Pricing Schedule).

### 8.4 OPTIONAL WORK

Upon County's request for Optional Work and mutual agreement, Contractor shall provide to County Optional Work using Pool Dollars in accordance with the agreed upon Maximum Fixed Priced and the Scope of Work, as specified in Paragraph 5.4 (Optional Work). Contractor's rates for Optional Work shall be subject to the applicable pricing terms set forth in Exhibit B (Pricing Schedule) for the term of this Agreement. Any Optional Work provided by Contractor shall not cause an increase in the Maintenance Fees under this Agreement with the exception of any Additional Software procured as part of Additional Products. Absent an Amendment in accordance with Paragraph 4 (Changes Notices and Amendments), the Pool Dollars are the aggregate amount available during the term of this Agreement for Optional Work requested and provided following Go-Live.

### 8.5 NON-APPROPRIATION OF FUNDS

County's obligation may be limited if it is payable only and solely from funds appropriated for the purpose of this Agreement. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then County shall, at its sole discretion, either (i) terminate this Agreement as of June 30 of the last fiscal year for which funds were appropriated or (ii) reduce the work provided hereunder in accordance with the funds appropriated, as mutually agreed to by the parties. County will notify Contractor in writing of any such non-appropriation of funds at its election at the earliest possible date.

### 8.6 COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS

In the event that County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for the reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, County reserves the right to reduce its payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the services to be provided by Contractor under this Agreement shall also be reduced correspondingly. County's notice to the Contractor regarding said reduction in payment obligations shall be provided within thirty (30) calendar days of the Board of

Supervisors' approval of such actions. Except as set forth in the preceding sentence, Contractor shall continue to provide all of the services set forth in this Agreement.

## 8.7 COST OF LIVING ADJUSTMENT

The cost of living adjustment for System Maintenance services performed by Contractor under this Agreement during the Extended Term shall be capped at the lesser of: (i) the most recently published percentage change, if any, in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) for the Los Angeles – Riverside – Orange County Area for the twelve (12) month period preceding the Agreement anniversary date and (ii) the general salary movement percentage granted to County employees for the twelve (12) month period preceding the prior July 1 as determined by County's Chief Executive Office (hereafter "Cost of Living Adjustment" or "COLA"). With regard to the general salary movement number, the pertinent figure in any fiscal year (FY) will always be determined by a retrospective look at the prior fiscal year. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in County employee salaries, no Cost of Living Adjustment will be granted.

## 9. **INVOICES AND PAYMENTS**

### 9.1 INVOICES

Contractor shall invoice County in accordance with Exhibit B (Pricing Schedule) (1) for Implementation Services, based on the Deliverable amounts due upon Contractor's completion and County's written approval of billable Deliverables; (2) for System Maintenance, by payment of the applicable Maintenance Fees for Maintenance Periods commencing upon Final Acceptance; and (3) for all Optional Work, on a per Change Notice basis, by payment of the actual price expended by Contractor for the provision of Optional Work, not to exceed the Maximum Fixed Price quoted for such Optional Work following Contractor's completion and County's written approval of the Optional Work.

#### 9.1.1 SUBMISSION OF INVOICES

Contractor's invoice shall include the charges owed to Contractor by County under the terms of this Agreement as provided in Exhibit B (Pricing Schedule). All invoices and supporting documents under this Agreement shall be submitted to the person designated in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement) as County's Project Manager at the address specified in such Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

#### 9.1.2 INVOICE DETAILS

Each invoice submitted by Contractor shall indicate, at a minimum:

- (1) Agreement Name and Number;
- (2) The tasks, subtasks, deliverables, goods, services or other Work for which payment is claimed, including Implementation Services Deliverable, System Maintenance and Optional Work;
- (3) The price of such tasks, subtasks, deliverables, goods, services or other Work calculated based on the pricing terms set forth in Exhibit B (Pricing Schedule) or any Change Notice, as applicable.
- (4) The date of written approval of the tasks, subtasks, deliverables, goods, services or other Work by County's Project Director or designee;



- (5) Indication of any applicable withhold or holdback amounts for payments claimed or reversals thereof;
- (6) Indication of any applicable credits due County under the terms of this Agreement or reversals thereof;
- (7) A copy of any applicable Acceptance certificates signed by County's Project Director and County's Project Manager; and
- (8) Any other information required by County's Project Director.

#### 9.1.3 APPROVAL OF INVOICES

All invoices submitted by Contractor to County for payment shall have County's written approval as provided in this Paragraph 9.1, which approval shall not be unreasonably withheld. In no event shall County be liable or responsible for any payment prior to such written approval.

#### 9.1.4 INVOICE DISCREPANCIES

County's Project Director will review each invoice for any discrepancies and will, within thirty (30) days of receipt thereof, notify Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within thirty (30) days of receipt of County's notice of discrepancies and disputed charges. If County's Project Director does not receive a written explanation for the charges within such thirty (30) day period, Contractor shall be deemed to have waived its right to justify the original invoice amount, and County, in its sole discretion, shall determine the amount due, if any, to Contractor and pay such amount in satisfaction of the disputed invoice, subject to the Dispute Resolution Procedure.

All County correspondence relating to invoice discrepancies shall be sent by email, followed by hard copy, directly to County's Project Manager with a copy to County's Project Director at the addresses specified in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

#### 9.2 DELIVERY OF SOLUTION SOFTWARE

It is in the intent of the parties that all Solution Software and Documentation provided by Contractor under this Agreement, including any product of System Maintenance services and any Optional Work, shall be delivered (i) solely in electronic format (e.g., via electronic mail or internet download), or (ii) personally by Contractor staff who shall load such Solution Software and Documentation onto County's hardware but who will retain possession of all originals and copies of such tangible media (e.g., CD-ROM, magnetic tape, printed manuals) used to deliver the Solution Software and Documentation to County.

Any Solution Software and Documentation that is provided or delivered by Contractor to County in a tangible format shall be F.O.B. Destination. The Contract Sum shown in Paragraph 8.1 (Maximum Contract Sum) includes all amounts necessary for County to reimburse Contractor for all transportation and related insurance charges, if any, on Solution Software Components and Documentation procured by County from Contractor pursuant to this Agreement. All transportation and related insurance charges, if any, shall be paid directly by Contractor to the applicable carrier. Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all such transportation and related insurance charges.

### 9.3 SALES/USE TAX

The Contract Sum shown in Paragraph 8 (Contract Sum) shall be deemed to include all amounts necessary for County to reimburse Contractor for all applicable California and other state and local sales/use taxes on all Solution components provided by Contractor to County pursuant to or otherwise due as a result of this Agreement, including, but not limited to, the product of System Maintenance and any Optional Work, to the extent applicable. All California sales/use taxes shall be paid directly by Contractor to the State or other taxing authority.

Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, any and all such California and other state and local sales/use taxes. Further, Contractor shall be solely liable and responsible for, and shall indemnify, defend, and hold harmless County from, all applicable California and other state and local sales/use tax on all other items provided by Contractor pursuant to this Agreement and shall pay such tax directly to the State or other taxing authority. In addition, Contractor shall be solely responsible for all taxes based on Contractor's income or gross revenue, or personal property taxes levied or assessed on Contractor's personal property to which County does not hold title.

### 9.4 PAYMENTS

Provided that Contractor is not in under any provision of this Agreement, County will pay all invoice amounts to Contractor within thirty (30) days of receipt of invoices that have not been disputed in accordance with Paragraph 9.1.4 (Invoice Discrepancies) above. County's failure to pay within the thirty (30) day period, however, shall not be deemed as automatic invoice approval or Acceptance by County of any deliverable for which payment is sought, nor shall it entitle Contractor to impose an interest on any late payment.

### 9.5 COUNTY'S RIGHT TO WITHHOLD PAYMENT

Notwithstanding any other provision of this Agreement, and in addition to any rights of County given by law or provided in this Agreement, County may upon written notice to Contractor withhold payment for any deliverable while Contractor, with no fault of County, is in default hereunder or default related to Work.

### 9.6 HOLDBACKS

County will hold back ten percent (10%) of the amount of Deliverable invoices of Implementation Services, submitted by Contractor under this Agreement and approved by County pursuant to Paragraph 2.4 (Approval of Work), as further specified in Exhibit B (Pricing Schedule). The cumulative amount of such holdbacks shall be due and payable to Contractor upon Final Acceptance, subject to adjustment for any amounts arising under this Agreement owed to County by Contractor, including, but not limited to, any amounts arising from Paragraphs 9.1.4 (Invoice Discrepancies), 9.5 (County's Right to Withhold Payment) and any partial termination of any Task, Subtask or Deliverable set forth in the Statement of Work as provided herein.

## 10. **SYSTEM OWNERSHIP AND LICENSE**

### 10.1 SYSTEM OWNERSHIP

#### 10.1.1 SYSTEM ENVIRONMENT

Contractor acknowledges that County, or the rightful owner, owns all Client Environment components provided by County, including the Data Warehouse, Solution Data and County

Software; while Contractor, or the rightful owner, shall retain ownership of all Server Environment components provided by Contractor, as may be specified in Attachment A.2 (System Configuration).

#### 10.1.2 SOLUTION SOFTWARE

All Solution Software provided by Contractor to County pursuant to this Agreement, including Application Software and Server Software, and related Documentation, is and shall remain the property of Contractor or any rightful third party owner, with which all Proprietary Rights shall reside, and which shall be subject to the terms of the License granted pursuant to Paragraph 10.2 (License) below.

#### 10.1.3 SOLUTION DATA

All Solution Data provided or made accessible by County to Contractor is and shall remain the property of County.

#### 10.1.4 WORK PRODUCT

Contractor, or the rightful owner, shall remain the sole owner of Contractor's Application Software, including the Baseline Application and Application Modifications, and all derivative works therein (hereinafter collectively "Work Product"). Work Product does not include any County Materials previously owned by County or designed or developed by Contractor for County.

### 10.2 LICENSE

#### 10.2.1 LICENSE GRANT

Subject to the provisions of Paragraph 10.1 (System Ownership), Contractor hereby grants to County a perpetual, irrevocable, non-exclusive license to use the Solution Software and Work Product, including any related Documentation (hereinafter "License"), by all Users in accordance with the scope set forth in Paragraph 10.2.3 (Scope of License) and subject to the restrictions set forth in Paragraph 10.2.4 (License Restrictions) during the term specified in Paragraph 10.2.2 (License Term). Notwithstanding the foregoing, upon mutual agreement of the parties, County may obtain its own license for any Third Party Software, the term and scope of which shall be subject to the terms of County's agreement with the provider of such Third Party Product.

#### 10.2.2 LICENSE TERM

The License granted under this Agreement shall commence upon the earlier of the delivery of a first Application Software component to County or the Effective Date and shall continue in perpetuity and without regard to the end of the term of this Agreement, unless otherwise specified herein.

#### 10.2.3 SCOPE OF LICENSE

The License granted by Contractor under this Agreement provides County with the following rights:

- (1) To use, install, integrate with other software, operate and execute the Solution Software in the System Environment on an unlimited number of computers, servers, local area networks and wide area networks, including web connections, by an unlimited number of Users in the conduct of the business of County as provided in the Agreement;
- (2) To use, modify, copy, translate and compile the Application Software after such time as one of the Release Conditions described in Paragraph 10.3.3 (Source Code Release

Conditions) has occurred which would permit County to use the Source Code as provided in this Paragraph 10.2.3 and Paragraph 10.3 (Source Code) below;

- (3) To use, modify, copy and display the Documentation, including but not limited to Solution and User manuals, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License;
- (4) To permit third party access to the Solution Software, the Documentation, the Source Code, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of System Maintenance services, Application Modifications, Professional Services or other business use or support of the Solution Software as contemplated by this Agreement; provided, however, without limiting County's rights under this Paragraph 10.2.4(4), County covenants and agrees that it shall not exercise any of the rights contained in this Paragraph 10.2.4(4) unless and until the occurrence of any one of the Release Conditions; and
- (5) Pursuant to Paragraph 54 (Assignment by County), to reproduce and use a reasonable number of copies of the Solution Software provided by Contractor: (i) by County and permitted assignees, for archive and backup purposes; and (ii) by County, for use by permitted assignees so long as all copies of the Solution Software contain the proprietary notices appearing on the copies initially furnished to County by Contractor.

#### 10.2.4 LICENSE RESTRICTIONS

County acknowledges and agrees (i) that the Application Software provided by Contractor to County under the Agreement, including related Documentation, is the confidential and copyrighted property of Contractor, or its licensors, and all rights therein not expressly granted to County are reserved to Contractor, or its licensors, as applicable; and (ii) that Contractor, or its licensors, retain all Proprietary Rights in and to the foregoing. Subsequently, County's License to the Application Software provided by Contractor hereunder is limited by the restrictions set forth in this Paragraph 10.2.4. County will not:

- (1) Reverse engineer, disassemble or decompile the Application Software provided by Contractor;
- (2) Transfer, sublicense, rent, lease, convey or assign (unless resulting from an Agreement assignment under Paragraph 54 (Assignment by County)) the Application Software provided by Contractor;
- (3) Copy or reproduce the Application Software provided by Contractor in any way except as reasonably necessary for backup, archival or business continuity purposes;
- (4) Use the Application Software provided by Contractor on a timesharing, service bureau, subscription service or rental basis for any third party; or
- (5) Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the Application Software provided by Contractor.

#### 10.3 SOURCE CODE

##### 10.3.1 SOURCE CODE ESCROW

Upon the Effective Date, but no later than Contractor commences any work hereunder, Contractor shall have established, at no cost to County, a source code escrow with a nationally recognized source code escrow company (hereinafter "Escrow Agent"). A copy of

the Source Code Escrow Agreement shall be attached to and incorporated by reference into this Agreement as Exhibit K (Source Code Escrow Agreement). Contractor shall deposit with the Escrow Agent the Source Code for all Application Software utilized by Contractor for the Solution under this Agreement, including the Core Application, Interfaces, Third Party Application, Customizations and Application Modifications. Contractor shall update the Source Code by depositing with the Escrow Agent the Source Code for all Application Modifications, including, but not limited to, Software Modifications, Additional Software, Updates, Replacement Products, if any, and any other modifications or enhancements to the deposited Application Software and any Application Software newly licensed or developed for the purpose of this Agreement. Contractor's duty to update the Source Code shall continue through the term of this Agreement.

Contractor's duty to maintain a Source Code Escrow Agreement and to deposit the Source Code with Escrow Agent shall continue throughout the term of this Agreement, unless one of the Release Conditions occurs which would permit County to obtain and use the Source Code in accordance with the terms of this Paragraph 10.3. Contractor may, by written notice to County, change the Escrow Agent for the Source Code under this Agreement. Any such change shall be accomplished by a Change Notice in accordance with Paragraph 4 (Changes Notices and Amendments) above and shall not modify Contractor's obligations or County's rights with respect to the Source Code under this Agreement.

#### 10.3.2 NATURAL DEGENERATION

The parties acknowledge that as a result of the passage of time alone, the deposited Source Code may be susceptible to loss of quality ("Natural Degeneration"). For the purpose of reducing the risk of Natural Degeneration, Contractor shall deposit with the Escrow Agent a new copy of all deposited Source Code no less frequently than every six (6) months or as provided in the Source Code Escrow Agreement. In the event the Source Code or any part of it is destroyed or corrupted, upon County's request, Contractor shall provide a replacement copy of the Source Code to the Escrow Agent.

#### 10.3.3 SOURCE CODE RELEASE CONDITIONS

In addition to the conditions for release of Source Code identified in the Source Code Escrow Agreement, Contractor shall cause the release of the Source Code to County, and County shall have the right to immediately begin using the Source Code, as provided in Paragraph 10.3.5 (Possession and Use of Source Code), at no charge to County, upon the occurrence of the following events (collectively with the release conditions identified in the Source Code Escrow Agreement "Release Condition(s)"):

- (1) The insolvency of Contractor, including as set forth in Paragraph 23 (Termination for Insolvency); or
- (2) Contractor is unwilling or unable to provide all System Maintenance services in accordance with the terms of this Agreement, including Exhibit D (Service Level Agreement); or
- (3) Contractor ceasing to maintain or support the current version or the last two (2) prior Version Releases of the Application Software for reasons other than County's failure to pay for, or election not to receive, Contractor's System Maintenance services, and no other qualified entity assuming the obligation to provide such System Maintenance services, which may result in County's termination of the Agreement for default in accordance with Paragraph 20 (Termination for Default); or

- (4) Successor ceasing to do business with County with respect to this Agreement; or
- (5) A different hardware or operating system platform is established for the product and required for use of the Application Software by Contractor, without maintenance of the Application Software residing in the Client Environment (Client Application) on the originally agreed equipment or operating system platform within the term of this Agreement, other than due to the failure of the manufacturer of such platform to maintain and support same.

Upon occurrence of any of the Release Conditions, Contractor to instruct the Escrow Agent to release the Source Code to County. Notwithstanding the foregoing, County alone may file for release of the Source Code if it believes in good faith that a Release Condition has occurred, subject to the provisions of the Source Code Escrow Agreement.

#### 10.3.4 COUNTY'S RIGHT TO VERIFY SOURCE CODE

Regardless of whether one of the Release Conditions occurs, County shall have the right, at County's sole expense, to request that Contractor verify the relevance, completeness, currency, accuracy, and functionality of the deposited Source Code by, among other things, compiling the Source Code and performing test runs for comparison with the applicable Application Software. In the event such testing demonstrates the Source Code does not correspond to the applicable Application Software, Contractor shall reimburse County for all costs and fees incurred in the testing and immediately deposit the correct Source Code with the Escrow Agent.

#### 10.3.5 POSSESSION AND USE OF SOURCE CODE

Upon the occurrence of a Release Condition, County will be entitled to obtain a copy of such Source Code from the Escrow Agent pursuant to the terms of the Source Code Escrow Agreement. County shall be entitled to use the Source Code as needed to remedy the event of release and mitigate any damages arising from such event, provided that mitigation of damages shall not include the sale or sublicense of the Source Code. Such use will include, but is not limited to, County's right to perform its own support and maintenance, alter or modify the Source Code and/or obtain the benefits sought under this Agreement, subject to the limitations of Paragraph 10.3.6 (Proprietary Rights) below.

#### 10.3.6 PROPRIETARY RIGHTS

Subject to the provisions of Paragraph 10.3.5 (Possession and Use of Source Code) and County's License to, and Contractor's ownership of, the Core Application as provided in Paragraph 10.1 (System Ownership), Source Code obtained by County under the provisions of this Agreement shall remain subject to every license restriction, proprietary rights protection and other County obligation specified in this Agreement, provided, however, County may make such Source Code available to third parties as needed to assist it in making authorized use of the Solution. County acknowledges that any possession of the Source Code referred to herein is subject to the confidentiality and proprietary provisions of access to any third party. Should use of the Source Code as provided in this Paragraph 10.3.6 involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Contractor has an interest, Contractor, on behalf of itself and its assignees and successors, agrees not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against County or any User provided use of Application Software and Source Code is in accordance with this Agreement.

### 10.3.7 SOURCE CODE ESCROW AGREEMENT AMENDMENT

As between County and Contractor, this Paragraph 10.3 shall constitute an amendment to the Source Code Escrow Agreement and incorporate all of the Release Conditions identified in Paragraph 10.3.3 (Source Code Release Conditions) above.

## 11. **SOLUTION ACCEPTANCE**

### 11.1 SYSTEM TESTS

County and/or Contractor, as applicable, shall conduct all tests (hereinafter “System Test(s)”) specified in this Paragraph 11.1 and in Exhibit A (Statement of Work). Such System Tests shall include, without limitation, the following:

- (1) *User Acceptance Test*: As set forth in Subtask 2.4 (Develop UAT Plan) of Exhibit A (Statement of Work), to confirm that the Solution meets all System Requirements.
- (2) *Volume Test*: As set forth in Subtask 3.2 (Develop and Execute Volume Test) of Exhibit A (Statement of Work), to estimate, size and volume test the Solution configuration.
- (3) *Data Migration Test*: As set forth in Subtask 4.2 (Develop and Test Data Migration Methods) of Exhibit A (Statement of Work), to confirm that the Existing Data has been converted properly to meet all applicable System Requirements.
- (4) *Final User Acceptance Test*: As set forth in Subtask 8.3 (Conduct Final User Acceptance Test) of Exhibit A (Statement of Work), to confirm that the Solution is ready for Production User.

### 11.2 PRODUCTION USE

The System shall achieve Go-Live and be ready for Production Use when County’s Project Director, or his/her designee, approves in writing Deliverable 8.3 (Go-Live) of Exhibit A (Statement of Work).

### 11.3 FINAL ACCEPTANCE

The System shall achieve Final Acceptance when County’s Project Director, or his/her designee, approves in writing Deliverable 8.4 (Final Acceptance) of Exhibit A (Statement of Work). In the event the System fails to successfully achieve Final Acceptance, Contractor shall provide County with a diagnosis of the Deficiencies and proposed solution(s). County and Contractor shall agree upon all such proposed solutions prior to their implementation.

### 11.4 FAILED TESTING

- 11.4.1 If County’s Project Director makes a good faith determination at any time that the System as a whole, or any component thereof, has not successfully completed a System Test or has not achieved Final Acceptance (collectively referred to for purposes of this Paragraph 11.4 as “Designated Test”), County’s Project Director shall promptly notify Contractor in writing of such failure, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting. Contractor shall notify County’s Project Director in writing when such corrections, repairs and modifications have been completed, and the applicable Designated Test shall begin again. If, after the applicable Designated Test has been completed for a second time, County’s Project Director makes a good faith determination that the System component or the System again fails to

pass the applicable Designated Test, County's Project Director shall promptly notify Contractor in writing, specifying with as much detail as possible the manner in which the System component or the System failed to pass the applicable Designated Test. Contractor shall immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the System component or the System as will permit the System component or the System to be ready for retesting.

- 11.4.2 Such procedure shall continue, subject to County's rights under Paragraphs 8.2.2 (Credits to County) and 8.2.3 (Termination) in the event Contractor fails to timely complete any Key Deliverable until such time as County notifies Contractor in writing either: (i) of the successful completion of such Designated Test or (ii) that County has concluded, subject to the Dispute Resolution Procedure, that satisfactory progress toward such successful completion of such Designated Test is not being made, in which latter event, County shall have the right to make a determination, which shall be binding and conclusive on Contractor, that a non-curable default has occurred and to terminate this Agreement in accordance with Paragraph 20 (Termination for Default) on the basis of such non-curable default. In the event Contractor, using good faith effort, is unable to cure a deficiency by re-performance after two (2) attempts, County and Contractor will work together to agree on a mutually acceptable resolution, provided that if County and Contractor cannot agree on a resolution, County will terminate this Agreement for default pursuant to Paragraph 20 (Termination for Default).
- 11.4.3 Such a termination by County shall be subject to the Dispute Resolution Procedure, either, as determined by County in its sole judgment: (i) a termination with respect to one or more of the components of the System; or (ii) if County believes the failure to pass the applicable Designated Test materially affects the functionality, performance or desirability to County of the System as a whole, the entire Agreement. In the event of a termination under this Paragraph 11.4, County shall have the right to receive from Contractor reimbursement of all payments made to Contractor by County under this Agreement for the System component(s) and related Deliverables as to which the termination applies, or, if the entire Agreement is terminated, all amounts paid by County to Contractor under this Agreement. If the termination applies only to one or more System component(s), at County's sole option, any reimbursement due to it may be credited against other sums due and payable by County to Contractor. The foregoing is without prejudice to any other rights that may accrue to County or Contractor under the terms of this Agreement or by law.

## 11.5 SYSTEM USE

Subject to County's obligations of Acceptance set forth in Exhibit A (Statement of Work) and the Agreement, following the Solution implementation by Contractor and prior to Final Acceptance by County, County shall have the right to use, in a Production Use mode, any completed portion of the Solution, without any additional cost to County where County determines that it is necessary for County's operations. Such Production Use shall not restrict Contractor's performance under this Agreement and shall not be deemed Acceptance or Final Acceptance of the System.

## 12. **WARRANTIES AND CORRECTION OF DEFICIENCIES**

### 12.1 SYSTEM WARRANTIES

Contractor hereby warrants to County that the System shall be free from any and all Major Deficiencies commencing from Go-Live and continuing through Final Acceptance (hereinafter "Warranty Period"). All Deficiencies reported or discovered shall be corrected in accordance with Exhibit D (Service Level Agreement) and shall be at no cost to County



during the Warranty Period. Contractor shall meet all of the warranties set forth in Exhibit D (Service Level Agreement), including but not limited to general warranties, System warranties and System Performance warranty.

## 12.2 PROBLEM RESOLUTION

Provided that County is covered by System Maintenance as provided in this Agreement, any non-conformances, breaches of warranties specified herein and other Deficiencies reported and discovered during the term of the Agreement shall be corrected in accordance with Exhibit D (Service Level Agreement).

## 12.3 CONTINUOUS PRODUCT SUPPORT

- 12.3.1 In the event that Contractor replaces any or all components of the Application Software with other software modules or components (hereinafter “Replacement Product”) during the term of the Agreement in order to fulfill its obligations under the Agreement and to meet the System Requirements, then the License shall be deemed to automatically include such Replacement Product without cost or penalty to County even if such Replacement Product contains greater functionality than the Application Software it replaced. If required by County, Contractor shall provide the necessary training to County personnel to utilize the Replacement Product at no cost to County.
- 12.3.2 In the event any or all components of the Application Software are migrated to the Replacement Product as a result of an acquisition, sale, assignment, transfer or other change in control of Contractor, then any assignee or successor, by taking benefit (including, without limitation, acceptance of any payment under this Agreement), shall be deemed to have ratified this Agreement. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product.
- 12.3.3 The following terms and conditions shall apply if County elects to transfer the License to a Replacement Product:
- (1) Contractor, or its assignee or successor, shall, at no cost to County, implement the Replacement Product in the System Environment including the Client Environment where the Client Application resides, convert and migrate all of the Solution Data from the Application Software format to the Replacement Product format to ensure Production Use of such Replacement Product;
  - (2) Any prepaid Maintenance Fees for the Solution shall transfer in full force and effect for the balance of the Replacement Product’s maintenance and support term (or equivalent service) at no additional cost. If the prepaid amount is greater than the Replacement Product’s maintenance and support fees for the same term, the credit balance shall be applied to future Maintenance Fees or returned to County, at County’s option;
  - (3) Any and all modules offered separately and needed to match the original Application Software’s level of functionality shall be supplied by Contractor, or its assignee or successor, without additional cost or penalty, and shall not affect the calculation of any Annual Fees;
  - (4) Contractor shall provide to County the necessary System Training for purposes of learning the Replacement Product. Such training shall be provided at no cost to County;
  - (5) All License terms and conditions, at a minimum, shall remain as granted herein with no additional fees imposed on County; and
  - (6) The definition of Application Software shall include the Replacement Product.

12.4 **WARRANTY PASS-THROUGH**

Contractor shall assign to County to the fullest extent permitted by law or by this Agreement, and shall otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any System component or any other product or service provided hereunder shall fully extend to and be enjoyed by County.

12.5 **REMEDIES**

County's remedies under the Agreement for the breach of the warranties set forth in this Agreement, including Exhibit D (Service Level Agreement), will be limited to the repair or replacement by Contractor, at its own expense, of the non-conforming System components and the specific remedies set forth in Exhibit D (Service Level Agreement) and any other corrective measures specified in Exhibit D (Service Level Agreement) and this Agreement.

12.6 **BREACH OF WARRANTY OBLIGATIONS**

Failure by Contractor to timely perform its obligations set forth in this Paragraph 12 shall constitute a material breach, upon which, in addition to County's other rights and remedies set forth herein, County may, after written notice to Contractor and provision of a reasonable cure period, terminate this Agreement in accordance with Paragraph 20 (Termination for Default).

12.7 **DISCLAIMER OF WARRANTIES**

Contractor expressly disclaims all warranties not expressly specified anywhere in this Agreement, including the implied warranty of merchantability or fitness for a particular purpose or any warranties arising as a result of custom or usage in the trade or by course of dealing. Nothing in this Paragraph 12.7 negates any other express warranties provided by Contractor under the Agreement.

**13. INDEMNIFICATION**

Notwithstanding any provision of this Agreement to the contrary, whether expressly or by implication, Contractor shall indemnify, defend and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from or relating to this Agreement.

Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 13 shall be conducted by Contractor and performed by counsel selected by Contractor. County will reasonably cooperate with Contractor in the investigation, defense and/or settlement of any claim hereunder. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense.

**14. INSURANCE AND PERFORMANCE SECURITY**

14.1 **GENERAL INSURANCE REQUIREMENTS**

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Paragraph 14. These minimum insurance coverage terms, types and limits ("Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. County in no

way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Agreement.

#### 14.2 EVIDENCE OF COVERAGE AND NOTICE

- 14.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.
- 14.2.2 Renewal Certificates shall be provided to County not less than ten (10) days after renewal of Contractor's policy. County reserves the right to obtain copies of relevant sections of any required Contractor and/or subcontractor insurance policies at any time.
- 14.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- 14.2.4 Neither County's failure to obtain, nor County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to County's Project Director at the address specified in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Such report shall be made in writing within twenty-four (24) hour or the next Business Day. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

#### 14.3 ADDITIONAL INSURED STATUS AND SCOPE OF COVERAGE

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to County. The full policy limits and scope of protection also shall apply to County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional

insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

14.3.1 CANCELLATION OF INSURANCE

Except in the case of cancellation for non-payment of premium, Contractor's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than thirty (30) days advance written notice by mail of any cancellation of the Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation for non-payment of premium.

14.3.2 INSURER FINANCIAL RATINGS

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County .

14.3.3 CONTRACTOR 'S INSURANCE SHALL BE PRIMARY

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

14.3.4 WAIVERS OF SUBROGATION

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

14.3.5 SUBCONTRACTOR INSURANCE COVERAGE REQUIREMENTS

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

14.3.6 DEDUCTIBLES AND SELF-INSURED RETENTIONS (SIRS)

Contractor's policies shall not obligate County to pay any portion of any Contractor deductible or SIR. County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects County or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

14.3.7 CLAIMS MADE COVERAGE

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

14.3.8 APPLICATION OF EXCESS LIABILITY COVERAGE

Contractor may use a combination of primary, and excess insurance policies which provide coverage as broad as (“follow form” over) the underlying primary policies, to satisfy the Required Insurance provisions.

14.3.9 SEPARATION OF INSURED

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations

14.3.10 ALTERNATIVE RISK FINANCING PROGRAMS

County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. County and its Agents shall be designated as an Additional covered Party under any approved program.

14.3.11 COUNTY REVIEW AND APPROVAL OF INSURANCE REQUIREMENTS

The County reserves the right to review and adjust the required Insurance provisions, conditioned upon County’s determination of changes in risk exposures.

14.4 INSURANCE COVERAGE

14.4.1 COMMERCIAL GENERAL LIABILITY INSURANCE

14.4.2 Providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

14.4.3 AUTOMOBILE LIABILITY INSURANCE

Providing scope of coverage equivalent to ISO policy form CA 00 01 with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor’s use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

14.4.4 WORKERS’ COMPENSATION AND EMPLOYERS’ INSURANCE

Insurance or qualified self-insurance satisfying statutory requirements, which includes Employers’ Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor’s operations,

coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

14.4.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

14.4.6 PROPERTY COVERAGE

If Contractor's given exclusive use of County owned or leased property shall carry property, Contractor coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP 10 30) form. County and its Agents shall be named as an Additional Insured and Loss Payee on Contractor's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.

14.5 PERFORMANCE SECURITY

Contractor shall furnish for the purpose of this Agreement, within thirty (30) days from the Effective Date, or such longer period as mutually agreed upon by County and Contractor, and in all events prior to commencing any Work under this Agreement, performance security in the form of a performance bond, a certificate of deposit (CD), an irrevocable letter of credit (LOC) or other performance security in a form and from a financial institution acceptable to County payable to County in the amount of the Contract Sum for the Work through the end of the Warranty Period, including Final Acceptance.

Prior to acceptance of Contractor's performance security, Contractor shall submit to County for approval the form of the proposed performance security. Both the initial expense and the annual premiums for the performance security shall be paid by Contractor.

In the event of termination under Paragraph 20 (Termination for Default) or Paragraph 23 (Termination for Insolvency), the performance security amount shall become payable to County for any outstanding damage assessments made by County against Contractor. An amount up to the full amount of the performance security may also be applied to Contractor's liability for any administrative costs and/or any excess costs incurred by County in obtaining similar software and services to replace those terminated as a result of Contractor's default or insolvency.

14.6 FAILURE TO MAINTAIN COVERAGE

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance or maintain performance security acceptable to County shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from such breach. Alternatively, County may purchase such required insurance coverage and, without further notice to Contractor, deduct from sums due to Contractor any premium costs advanced by County for such insurance.

15. INTELLECTUAL PROPERTY WARRANTY AND INDEMNIFICATION

- 15.1 Contractor represents and warrants: (i) that Contractor has the full power and authority to grant the License, ownership and all other rights granted by this Agreement to County; (ii) that no consent of any other person or entity is required by Contractor to grant such rights

other than consents that have been obtained and are in effect; (iii) that County is entitled to use the Solution without interruption, subject only to County's obligation to make the required payments and observe the License terms under this Agreement; (iv) that this Agreement and the Solution licensed or acquired herein, are neither subject to any liens, encumbrances, or pledges nor subordinate to any right or claim of any third party, including Contractor's creditors; (v) that during the term of this Agreement, Contractor shall not subordinate this Agreement or any of its rights hereunder to any third party without the prior written consent of County, and without providing in such subordination instrument for non-disturbance of County's use of the Solution (or any part thereof) in accordance with this Agreement; and (vi) that neither the performance of this Agreement by Contractor, nor the License to or ownership by, and use by, County and its Users of the Solution in accordance with this Agreement will in any way violate any non-disclosure agreement, nor constitute any infringement or other violation of any copyright, trade secret, trademark, service mark, patent, invention, proprietary information, or other rights of any third party.

- 15.2 Notwithstanding any provision to the contrary, whether expressly or by implication, Contractor shall indemnify, defend, and hold harmless the County its Special Districts, elected and approved officers, employees and agents (collectively referred to for purposes of this Paragraph 13 as "County") from and against any and all liability, including but not limited to demands, claims, actions, fees, damages, costs, and expenses (including attorneys and expert witness fees) arising from any alleged or actual infringement of any third party's patent or copyright, or any alleged or actual unauthorized trade secret disclosure, arising from or related to this Agreement and/or the operation and use of the System (collectively referred to for purposes of this Paragraph 13 as "Infringement Claim(s)"). Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 15.2 shall be conducted by Contractor and performed by counsel selected by Contractor. County shall provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, County shall have the right to participate in any such defense at its sole cost and expense.
- 15.3 County shall notify Contractor, in writing, as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure. Upon such notice by County, Contractor shall, at no cost to County, as remedial measures, either: (i) procure the right, by license or otherwise, for County to continue to use the Solution or affected component(s) thereof, or part(s) thereof, to the same extent of County's License or ownership rights under this Agreement; or (ii) to the extent procuring such right to use the Solution is not commercially reasonable, replace or modify the Solution or component(s) thereof with another software or component(s) thereof of at least equivalent quality and performance capabilities, as mutually determined by County and Contractor until the Solution and all components thereof become non-infringing, non-misappropriating and non-disclosing (hereinafter collectively for the purpose of this Paragraph 15.3 "Remedial Act(s)").
- 15.4 If Contractor fails to complete the Remedial Acts described in Paragraph 15.3 above then, County may terminate this Agreement for default pursuant to Paragraph 20 (Termination for Default), in which case, in addition to other remedies available to County, Contractor shall reimburse County for the entire Implementation Cost paid by County to Contractor under the Agreement.

## **16. PROPRIETARY CONSIDERATIONS**

### **16.1 COUNTY MATERIALS**

Contractor and County agree that all materials, plans, reports, Project Schedule, Project Plan, documentation and training materials developed by or solely for County, departmental procedures and processes, algorithms and any other information provided by County or specifically provided by Contractor for County pursuant to this Agreement, excluding the Work Product and Solution Software provided by Contractor and related Documentation (collectively “County Materials”), and all copyrights, patent rights, trade secret rights and other proprietary rights therein shall be the sole property of County. Contractor hereby assigns and transfers to County all of Contractor’s right, title, and interest in and to all such County Materials, provided that notwithstanding such County ownership, Contractor may retain possession of all working papers prepared by Contractor. During and for a minimum of five (5) years subsequent to the term of this Agreement, Contractor shall retain any and all such working papers. County shall have the right to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein.

### **16.2 TRANSFER TO COUNTY**

Upon request of County, Contractor shall execute all documents requested by County and shall perform all other reasonable acts requested by County to assign and transfer to, and vest in, County all Contractor’s right, title and interest in and to the County Materials, including, but not limited to, all copyright, patent and trade secret rights. County shall have the right to register all copyrights and patents in the name of County of Los Angeles. All material expense of effecting such assignment and transfer of rights shall be borne by County. Further, County shall have the right to assign, license or otherwise transfer any and all County’s right, title and interest, including, but not limited to, copyrights and patents, in and to the County Materials.

### **16.3 CONTRACTOR’S OBLIGATIONS**

Contractor shall protect the security of and keep confidential all County Materials and shall use whatever security measures are reasonably necessary to protect all such County Materials from loss or damage by any cause, including fire and theft.

### **16.4 PROPRIETARY AND CONFIDENTIAL**

Any and all County Materials which are developed or were originally acquired by Contractor outside the scope of this Agreement, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County’s Project Director as proprietary or confidential, and shall be plainly and prominently marked by Contractor as “PROPRIETARY” or “CONFIDENTIAL”, if applicable.

Notwithstanding any other provision of this Agreement, County shall not be obligated in any way under this Agreement for:

- (1) Any disclosure of any materials which County is required to make under the California Public Records Act or otherwise by law; or
- (2) Any Contractor’s proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.



## **17. DISCLOSURE OF INFORMATION**

### **17.1 DISCLOSURE OF AGREEMENT**

Contractor shall not disclose any terms or conditions of, or any circumstances or events that occur during the performance of, this Agreement to any person or entity except as may be otherwise provided herein or required by law. In the event Contractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor shall, to the extent allowed by law or such order, promptly notify County's Project Director. Thereafter, Contractor shall comply with such order, process or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor shall delay such compliance and cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief.

However, in recognizing Contractor's need to identify its services and related clients to sustain itself, County shall not inhibit Contractor from publicizing its role under this Agreement under the following conditions:

- (1) Contractor shall develop all publicity material in a professional manner.
- (2) During the term of this Agreement, Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County's Project Director for each such item.

Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Paragraph 17 shall apply.

### **17.2 REQUIRED DISCLOSURE**

Notwithstanding any other provision of this Agreement, either party may disclose information about the other that: (i) is lawfully in the public domain at the time of disclosure; (ii) is disclosed with the prior written approval of the party to which such information pertains; or (iii) is required by law to be disclosed.

## **18. CONFIDENTIALITY AND SECURITY**

### **18.1 CONFIDENTIALITY**

#### **18.1.1 CONFIDENTIAL INFORMATION**

Each party shall protect, secure and keep confidential all records, materials, documents, data and/or other information, including, but not limited to, billing and sensitive financial information, County and CSS records, data and information, County Materials, Solution Data, Work Product, Application Software, health information and any other data, records and information, received, obtained and/or produced under the provisions of this Agreement (hereinafter "Confidential Information"), in accordance with the terms of this Agreement and all applicable Federal, State or local laws, regulations, ordinances, and publicly known guidelines and directives relating to confidentiality. As used in this Agreement, the term "Confidential Information" shall also include records, materials, data and information deemed confidential by County or the applicable law under Paragraph 3.6 (Rules and Regulations). Each party shall use whatever appropriate security measures are necessary to

protect such Confidential Information from loss, damage and/or unauthorized dissemination by any cause, including but not limited to fire and theft.

Contractor shall inform all of its officers, employees, agents and subcontractors providing Work hereunder of the confidentiality provisions of this Agreement. Contractor shall ensure that all of its officers, employees, agents and subcontractors performing Work hereunder have entered into confidentiality agreements no less protective of County than the terms of this Agreement, including this Paragraph 18 and Exhibit F (Confidentiality and Assignment Agreement).

#### 18.1.2 DISCLOSURE

With respect to any of County's Confidential Information or any other records, materials, data or information that is obtained by Contractor (hereinafter collectively for the purpose of this Paragraph 18.1.2 "information"), Contractor shall: (i) not use any such information for any purpose whatsoever other than carrying out the express terms of this Agreement; (ii) promptly transmit to County all requests for disclosure of any such information; (iii) not disclose, except as otherwise specifically permitted by this Agreement, any such information to any person or organization other than County without County's prior written authorization that the information is releasable; and (iv) at the expiration or termination of this Agreement, return all such information to County or maintain such information according to the written procedures provided to Contractor by County for this purpose.

Under State law, including Welfare & Institutions Code, Section 10850 and California Department of Social Services (CDSS), Manual of Policies and Procedures, Division 19, Section 10859 et seq. and 17006, all of the case records and information pertaining to individuals receiving aid are confidential and no information related to any individual case or cases shall be in any way relayed to anyone except those employees of County so designated without written authorization from County.

#### 18.1.3 INDEMNIFICATION

Notwithstanding any provision of this Agreement to the contrary, whether expressly or by implication, Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents, from and against any and all loss, damage, liability and expense, including, but not limited to, defense costs and reasonable legal, accounting and other expert, consulting or professional fees, arising from any disclosure of such records and information by Contractor, its officers, employees, or agents, except for any disclosure authorized by this Paragraph 18.

#### 18.2 SECURITY

##### 18.2.1 SYSTEM SECURITY

Notwithstanding anything to the contrary herein, Contractor shall provide all Work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable County security policies, procedures and requirements provided by County to Contractor in writing as part of the RFP, this Agreement or otherwise as required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of systems and networks. Without limiting the generality of the foregoing, Contractor shall implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device into the System. In no event shall

Contractor's actions or inaction result in any situation that is less secure than the security that Contractor then provides for its own systems and data.

#### 18.2.2 SYSTEM DATA SECURITY

Contractor hereby acknowledges the right of privacy of all persons as to whom there exists any Solution Data or any other County data. Contractor shall protect, secure and keep confidential all Solution Data in compliance with all federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and information security (including any breach of the security of the System, such as any unauthorized acquisition of Solution Data that compromises the security, confidentiality or integrity of personal information), including California Civil Code Section 1798.82 and California Welfare and Institutions Code Section 10850. Further, Contractor shall take all reasonable actions necessary or advisable to protect all Solution Data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by County's Project Director, Contractor shall provide notification to all persons whose unencrypted personal information was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification shall be subject to the prior approval of County's Project Director. Contractor shall not use Solution Data for any purpose or reason other than to fulfill its obligations under this Agreement.

#### 18.3 REMEDIES

Contractor acknowledges that a breach by Contractor of this Paragraph 18 may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under this Paragraph 18 and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 18. The provisions of this Paragraph 18 shall survive the expiration of termination of this Agreement.

Contractor shall take all reasonable actions necessary or advisable to protect the Solution from loss or damage by any cause. Contractor shall bear the full risk of loss or damage to the Solution and any Solution Data by any cause other than resulting from force majeure or County's sole fault.

#### 19. **PROHIBITION AGAINST ASSIGNMENT AND DELEGATION**

19.1 Contractor shall not assign its rights and/or delegate its duties under this Agreement, whether in whole or in part, without the prior written consent of County, and any attempted assignment and/or delegation without such consent shall be null and void. County may exercise or withhold consent in its sole discretion. No assignment and/or delegation shall be effective unless and until there is a duly-executed, written amendment to this Agreement. Any payments by County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against County.

19.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior consent of County in accordance with the applicable provisions of this Agreement.

19.3 Any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express written approval shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

## **20. TERMINATION FOR DEFAULT**

20.1 County may, by written notice to Contractor, terminate the whole or any part of this Agreement if:

- (1) Contractor fails to timely provide and/or satisfactorily perform any task, subtask, deliverable, goods, service or other Work within the times specified in this Agreement, including the finalized Project Schedule; or
- (2) Contractor fails to demonstrate a high probability of timely fulfillment of the performance requirements under this Agreement; or
- (3) Contractor fails to make progress as to endanger performance of this Agreement in accordance with its terms; or
- (4) Contractor in performance of Work under the Agreement fails to comply with the requirements of this Agreement, including but not limited to Exhibit A (Statement of Work) and Exhibit D (Service Level Agreement); or
- (5) Contractor fails to perform or comply with any other provisions of this Agreement or materially breaches this Agreement;

and, unless a shorter cure period is expressly provided in this Agreement, does not cure such failure or fails to correct such failure or breach within thirty (30) days (or such longer period as County may authorize in writing) of receipt of written notice from County specifying such failure or breach, except that Contractor shall not be entitled to any cure period, and County may terminate immediately, in the event that Contractor's failure to perform or comply is not reasonably capable of being cured.

20.2 If, after County has given notice of termination under the provisions of this Paragraph 20, it is determined by County that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 21 (Termination for Convenience).

1.1 The rights and remedies of County provided in this Paragraph 20 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **21. TERMINATION FOR CONVENIENCE**

21.1 This Agreement may be terminated, in whole or in part, permanently or from time to time, when such action is deemed by County to be in its best interest. Termination of Work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective, which shall be no less than sixty (60) calendar days after the notice is sent. In the event County has purported to terminate this Agreement for default by notice pursuant to Paragraph 20 (Termination for Default) and it has later been determined that Contractor was not in default, no additional notice shall be required upon such determination.

21.2 After receipt of a notice of termination, Contractor shall submit to County, in the form and with any certifications as may be prescribed by County, Contractor's termination claim and invoice. Such claim and invoice shall be submitted promptly in accordance with Paragraph 24 (Effect of Termination).

## **22. TERMINATION FOR IMPROPER CONSIDERATION**

22.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, Amendment or extension of the Agreement or the making of any determinations with respect to Contractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

22.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County's Auditor-Controller Employee Fraud Hotline at (213) 974 0914 or (800) 544 6861.

22.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

## **23. TERMINATION FOR INSOLVENCY**

23.1 County may terminate this Agreement immediately at any time upon the occurrence of any of the following:

- (1) Insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay or has admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the United States Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed insolvent if it has ceased in the normal course of business to pay its debts which are disputed in good faith and which are not related to this Agreement as determined by County;
- (2) The filing of a voluntary or involuntary petition to have Contractor declared bankrupt, where the involuntary petition is not dismissed within sixty (60) days;
- (3) The appointment of a receiver or trustee for Contractor; or
- (4) The execution by Contractor of an assignment for the benefit of creditors.

23.2 The rights and remedies of County provided in this Paragraph 23 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

23.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Agreement, County may elect to retain its rights under this Agreement, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)). Upon written request of County to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee shall allow County to exercise all of its rights and benefits under this Agreement including, without limitation, such Section 365(n) (including, without limitation, the right to continued use of all source and object code versions of the Application Software and related Documentation in accordance with the terms of the Source

Code Escrow Agreement), and shall not interfere with the rights and benefits of County as provided therein. The foregoing shall survive the termination or expiration of this Agreement for any reason whatsoever.

## **24. EFFECT OF TERMINATION**

In the event that County, upon notice to Contractor, terminates this Agreement in whole or in part as provided herein, then:

- (1) Contractor and County shall continue the performance of this Agreement to the extent not terminated;
- (2) Contractor shall stop work under this Agreement on the date and to the extent specified in such notice and provide to County all completed Work and Work in progress, in a media reasonably requested by County;
- (3) Contractor shall promptly return to County any and all Confidential Information, including County data and County Materials, that relate to that portion of the Agreement and Work terminated by County;
- (4) County shall pay Contractor all monies due in accordance with the terms of the Agreement for the Work completed up to the time of termination;
- (5) Contractor shall return to County all monies paid by County, yet unearned by Contractor, including any prorated prepaid Annual Fees calculated depending on the date of termination, if applicable. Notwithstanding the foregoing, upon termination by County for default during Solution implementation, Contractor shall return all Implementation Cost amounts paid by County to Contractor during such Solution implementation, and County will return to Contractor all products of the terminated Implementation Services;
- (6) Upon termination by County for default pursuant to Paragraph 20 (Termination for Default) or for insolvency pursuant to Paragraph 23 (Termination for Insolvency), County shall have the right to procure, upon such terms and in such a manner as County may deem appropriate, goods, services and other Work, similar to those so terminated, and Contractor shall be liable to County for, and shall promptly pay to County by cash payment, any and all excess costs incurred by County, as determined by County, to procure and furnish such similar goods, services and other Work;
- (7) County shall have the rights set forth in Paragraphs 10.2 (License) and 10.3 (Source Code) to access and use the Source Code as set forth therein, including without limitation the right to modify all source and object code versions of the Application Software after such time as one of the Release Conditions described in Paragraph 10.3.3 (Source Code Release Conditions) has occurred which would permit County to use the Source Code; and
- (8) Contractor understands and agrees that County has obligations that it cannot satisfy without use of the Solution provided to County hereunder or an equivalent solution, and that a failure to satisfy such obligations could result in irreparable damage to County and the entities it serves. Therefore, Contractor agrees that in the event of any termination of this Agreement, Contractor shall fully cooperate with County in the transition of County to a new solution, toward the end that there be no interruption of County's day to day operations due to the unavailability of the Solution during such transition. Upon notice to Contractor, Contractor shall allow County or another selected contractor a transition period until expiration of the term of the Agreement, or in all other cases, at a date specified by County, for the orderly turnover of Contractor's Agreement activities and

responsibilities without additional cost to County. The transition from the Solution to another solution shall be performed by Contractor as Optional Work.

## **25. INDEPENDENT CONTRACTOR STATUS**

- 25.1 This Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association as between County and Contractor. The employees and agents of one party are not and shall not be, or construed to be, the employees or agents of the other party for any purpose whatsoever. Contractor shall function as, and in all respects is, an independent Contractor.
- 25.2 Contractor shall be solely liable and responsible for providing all workers' compensation insurance and benefits, liability insurance, employer taxes, compensation, and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, payroll taxes, disability insurance or benefits, or Federal, State or local taxes, or other compensation, benefits or taxes for any personnel provided by or performing work on behalf of Contractor.
- 25.3 The employees and agents of Contractor shall, while on the premises of County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.
- 25.4 Notwithstanding the provisions of this Paragraph 24(8), the employees and agents of Contractor shall, while on the premises of County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

## **26. SUBCONTRACTING**

- 26.1 County has relied, in entering into this Agreement, on the reputation of and on obtaining the personal performance of Contractor, specifically, Contractor Key Staff. Consequently, no performance by the Contractor Key Staff of this Agreement, or any portion thereof, shall be subcontracted by Contractor without notice to County as provided in this Paragraph 26. Any attempt by Contractor to subcontract any performance of this Agreement by the Contractor Key Staff without such notice shall be null and void and shall be deemed a material breach of this Agreement, upon which County may immediately terminate this Agreement.
- 26.2 In the event Contractor subcontracts any portion of its performance of the Agreement by the Contractor Key Staff, Contractor shall provide to County, in writing, a notice regarding such subcontract, which shall include:
- (1) The reasons for the particular subcontract;
  - (2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected;
  - (3) A detailed description of the Work to be provided by the proposed subcontractor;
  - (4) Confidentiality provisions applicable to the proposed subcontractor's officers, employees and agents, which would be incorporated into the subcontract;
  - (5) include (i) Exhibit F (Confidentiality and Assignment Agreement), (ii) Exhibit G (Contractor's EEO Certification), (iii) Exhibit I (Safely Surrendered Baby Law), and (iii) any other standard County required provisions;
  - (6) A representation from Contractor that:
    - a. the proposed subcontractor is qualified to provide the Work for which subcontractor is being hired;

- b. either the proposed subcontractor maintains the insurance required by this Agreement or Contractor has procured and maintains such insurance coverage for the proposed subcontractor;
- c. either the proposed subcontractor or Contractor shall be solely liable and responsible for any and all of subcontractor's taxes, payments and compensation, including compensation to its employees, related to the performance of Work under this Agreement; and
- d. either the proposed subcontractor or Contractor shall provide for indemnification of County under the same terms and conditions as the indemnification provisions of this Agreement, including those specified in Paragraphs 13 (Indemnification) and 15 (Intellectual Property Warranty and Indemnification); and

(7) Other pertinent information and/or certifications reasonably requested by County.

- 26.3 County will review Contractor's request to subcontract and determine on a case-by-case basis whether or not to consent to such request, which consent shall not be unreasonably withheld.
- 26.4 Notwithstanding any provision of this Agreement to the contrary, whether expressly or by implication, Contractor shall indemnify, defend and hold harmless County, its officers, employees and agents, from and against any and all claims, demands, liabilities, damages, costs and expenses, including, but not limited to, defense costs and legal, accounting or other expert consulting or professional fees in any way arising from or related to Contractor's use of any subcontractor, including, without limitation, any officers, employees or agents of any subcontractor, in the same manner as required for Contractor, its officers, employees and agents, under this Agreement.
- 26.5 Notwithstanding any other provision of this Paragraph 26, Contractor shall remain fully responsible for any and all performance required of it under this Agreement, including those which Contractor has determined to subcontract, including, but not limited to, the obligation to properly supervise, coordinate and provide all Work required under this Agreement. All subcontracts shall be made in the name of Contractor and shall not bind nor purport to bind County. Furthermore, subcontracting of any Work under this Agreement shall not be construed to limit, in any way, Contractor's performance, obligations or responsibilities to County or limit, in any way, any of County's rights or remedies contained in this Agreement.
- 26.6 Subcontracting of any Work performed by the Contractor Key Staff under the Agreement shall not waive County's right to prior and continuing approval of any or all such Contractor Key Staff pursuant to the provisions of Paragraph 3.3 (Approval of Contractor's Staff), including any subcontracted members of the Contractor Key Staff. Contractor shall notify its subcontractors of this County's right prior to subcontractors commencing performance under this Agreement.
- 26.7 Notwithstanding subcontracting by Contractor of any Work under this Agreement, Contractor shall be solely liable and responsible for any and all payments and other compensation to all subcontractors, and their officers, employees, agents, and successors in interest, for any services performed by subcontractors under this Agreement.
- 26.8 In the event that County consents to any subcontracting, such consent shall apply to each particular subcontract only and shall not be, or be construed to be, a waiver of this Paragraph 26 or a blanket consent to any further subcontracting.



**27. DELIVERY AND RISK OF LOSS**

Contractor shall bear the full risk of loss due to total or partial destruction of the Software products loaded on CDs or other computer media, until such items are delivered to and accepted in writing by County as evidenced by County's signature on delivery documents.

**28. MOST FAVORED PUBLIC ENTITY**

If Contractor's prices decline, or should Contractor, at any time during the term of this Agreement, provide similar software, service levels, software models, components, goods or services under similar delivery conditions to the State of California or any county, municipality, or district of the State or to any other state, county or municipality at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to County. County shall have the right, at County's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 28 by review of Contractor's books and records.

**29. RECORDS AND AUDITS**

- 29.1 Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Contractor agrees that County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement to the extent required by law. All such material shall be kept and maintained by Contractor during the term of this Agreement and for a period of five (5) years thereafter, unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, Contractor shall make the necessary arrangements at its own cost and expense to have such material made available to the County within the County's borders.
- 29.2 In the event that an audit is conducted of Contractor specifically regarding this Agreement by any Federal or State auditor, then Contractor shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 29.3 Failure on the part of Contractor to comply with any of the provisions of this Paragraph 29 shall constitute a breach of this Agreement upon which County may terminate or suspend this Agreement under the terms of Paragraph 20 (Termination for Default).

**30. COUNTY'S QUALITY ASSURANCE PLAN**

County, or its agent, will evaluate Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Contractor's compliance with the terms and conditions of this Agreement. Contractor deficiencies, which County determines are severe or continuing and that may place performance of this Agreement in jeopardy, if not corrected, will be reported to the County's Board of Supervisors. The report will include improvements and/or corrective action measures taken by County and Contractor. If improvement does not occur consistent with the corrective action measures within thirty (30) days of County's notice of Contractor deficiencies, County may, at its sole option, terminate this Agreement, in whole or in part, pursuant to Paragraph 20 (Termination

for Default) or Paragraph 21 (Termination for Convenience), or impose other penalties as specified in this Agreement.

### **31. CONFLICT OF INTEREST**

- 31.1 No County employee whose position with County enables such employee to influence the award of this Agreement or any competing agreements shall be employed in any capacity by Contractor or have any other direct financial interest in this Agreement. No officer or employee of Contractor, who may financially benefit from the performance of work hereunder, shall in any way participate in County's approval or ongoing evaluation of such work, or in any way attempt to unlawfully influence County's approval or ongoing evaluation of such work.
- 31.2 Contractor shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement which are applicable to it as a Software and Services provider. Contractor warrants that it is not now aware of any facts which do create an unlawful conflict of interest for Contractor. If a party hereafter becomes aware of any facts, which might reasonably be expected to create an unlawful conflict of interest for it, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

### **32. COMPLIANCE WITH APPLICABLE LAWS**

- 32.1 In the performance of this Agreement, Contractor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, directives, guidelines, policies, and procedures, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.
- 32.2 Contractor shall indemnify, defend and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 32 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.
- 32.3 Contractor certifies and agrees that it fully complies with all applicable requirements of the Program regulations, as well as rules, ordinances, court rules, municipal laws, directives, and policies issued pursuant to the enabling statute(s) and/or State or Federal regulation or law. This includes compliance with mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 24, California Administrative Code), the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) and compliance with Section 306

of the Clean Air Act (42 USC 1857[h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Contractor shall be responsible for any relevant changes in the law, including but not limited to, changes in Program regulations, rules, ordinances, court rules, municipal laws, directives and policies issued pursuant to the enabling statute(s) and/or State or Federal regulation or law. Contractor shall also comply with all applicable ordinances, rules, policies, directives, and procedures issued or adopted by County for which Contractor is provided actual or constructive notice. County reserves the right to review Contractor's procedures to ensure compliance with the statutes, ordinances, regulations, rules, rulings, policies and procedures of the State and the Federal government, as applicable.

- 32.4 Failure by Contractor to comply with such laws and regulations shall be material breach of this Agreement and may result in termination of this Agreement.

### **33. FAIR LABOR STANDARDS**

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its officers, and employees from any and all third party liability for, wages, overtime pay, liquidated damages, penalties, court costs and attorneys' fees arising from acts engaged in by Contractor in violation of applicable wage and hour laws in the State of California and in the Federal Fair Labor Standards Act, for work performed by Contractor's employees for which County may be found jointly or solely liable, provided that County: ( i ) promptly notifies Contractor in writing of the claim; and (ii) allows Contractor to control, and cooperate with Contractor in, the defense and any related settlement negotiations.

### **34. COMPLIANCE WITH CIVIL RIGHTS LAWS**

- 34.1 Contractor herein certifies and agrees, and will re-certify upon County request no more frequently than once per year, that all persons employed by it, its affiliates, subsidiaries and holding companies will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 34.2 Contractor shall, pursuant to Los Angeles County Code Section 4.32, certify to and comply with the provisions of Contractor's EEO Certification (Exhibit G).
- 34.3 Contractor shall ensure that applicants and employees are treated equally during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 34.4 Contractor herein certifies and agrees, and will re-certify upon County request no more frequently than once per year, that it will deal with its subcontractors, bidders or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation, except to the extent necessary to comply with applicable Federal and State anti-discrimination laws and regulations.

- 34.5 Contractor herein certifies, and will re-certify upon County request no more frequently than once per year, that it, its affiliates, subsidiaries and holding companies are in compliance with all Federal, State, and local laws including, but not limited to:
- (1) Title VII, Civil Rights Act of 1964;
  - (2) Section 504, Rehabilitation Act of 1973;
  - (3) Age Discrimination Act of 1975;
  - (4) Title IX, Education Amendments of 1973, as applicable; and
  - (5) Title 43, Part 17, Code of Federal Regulations, Subparts A & B,
- and that no person shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or disability, be subject to discrimination as to any privileges or uses gained under this Agreement or under any project, program or activity supported by this Agreement.
- 34.6 Contractor shall allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 34 when so requested by County.
- 34.7 If County finds that any of the provisions of this Paragraph 34 have been violated, such violation shall, at the election of County, constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement at County's option, either for material breach under Paragraph 20 (Termination for Default) of this Agreement or for convenience under Paragraph 21 (Termination for Convenience) of this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated State or Federal anti-discrimination laws or regulations shall constitute a finding by County that Contractor has violated the anti-discrimination provisions of this Agreement.
- 34.8 The parties agree that in the event Contractor is found to have violated the anti-discrimination provisions of this Agreement, and that such discrimination was directly associated with the performance of services provided under this Agreement, County may require, pursuant to Los Angeles County Code Section 4.32.010 (E), that Contractor pay the sum of Five hundred Dollars (\$500) for each such violation, in lieu of termination or suspension hereof, as liquidated damages are extremely difficult to ascertain or calculate precisely. In the alternative, County may elect to terminate this Agreement pursuant to Paragraph 20 (Termination for Default).
- 35. RESTRICTIONS ON LOBBYING**
- 35.1 FEDERAL FUNDS PROJECTS
- If any Federal funds are to be used to pay for any portion of Contractor's work under this Agreement, County shall notify Contractor in writing in advance of such payment and Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Agreement also fully complies with all applicable certification and disclosure requirements.

35.2 **LOBBYIST ORDINANCE**

Contractor, and each County lobbyist or County lobbying firm, as defined in Los Angeles County Code Section 2.160.010, retained by Contractor, shall fully comply with County's Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Contractor or any County lobbyist or County lobbying firm retained by Contractor to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which County may immediately terminate or suspend this Agreement at County's option, either for material breach under Paragraph 20 (Termination for Default) of this Agreement or for convenience under Paragraph 21 (Termination for Convenience) of this Agreement.

**36. EMPLOYMENT ELIGIBILITY VERIFICATION**

36.1 Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding employment of aliens and others and that all its employees performing Services under this Agreement meet the citizenship or alien status requirements contained in Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603).

36.2 Contractor shall obtain from all employees performing under this Agreement all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Contractor shall retain such documentation for the period prescribed by law.

36.3 Contractor shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, but not limited to, defense costs and legal, accounting and other expert, consulting or professional fees, arising out of or in connection with any employer sanctions and any other liability which may be assessed against Contractor or County in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**37. CONTRACT HIRING**

37.1 **CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS**

Should Contractor require additional or replacement personnel after the effective date of this Agreement to perform the work set forth herein, Contractor shall give first consideration for such employment openings to permanent County employees who are targeted for layoff or qualified former County employees who are on a re-employment list during the term of this Agreement.

37.2 **CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR EMPLOYMENT**

Should Contractor require additional or replacement personnel after the Effective Date, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that Contractor will interview qualified candidates. County will refer GAIN participants by job category to Contractor.

In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, Contractor shall give County employees first priority.

37.3 **PROHIBITION AGAINST INDUCEMENT AND PERSUASION**

Contractor and County agree that, during the term of this Agreement and for a period of one (1) year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. Notwithstanding the foregoing, such prohibition shall not apply to any hiring action initiated through a public announcement.

38. **FEDERAL EARNED INCOME CREDIT**

If required by applicable law, Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided, in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

39. **CONTRACTOR RESPONSIBILITY AND DEBARMENT**

39.1 **RESPONSIBLE CONTRACTOR**

A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is County's policy to conduct business only with responsible contractors.

39.2 **CHAPTER 2.202**

Contractor is hereby notified that, in accordance with Chapter 2.202 of the Los Angeles Code, if County acquires information concerning the performance of Contractor on this Agreement or other contracts which indicates that Contractor is not responsible, County may, in addition to other remedies provided in this Agreement, debar Contractor from bidding or proposing on, or being awarded, and/or performing work on, County agreements for a specified period of time, which generally will not exceed five (5) years, although may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing agreements Contractor may have with County.

39.3 **NON-RESPONSIBLE CONTRACTOR**

County may debar Contractor if County's Board of Supervisors finds, in its discretion, that Contractor has done any of the following: (i) violated any term of a contract with County or a nonprofit corporation created by County; (ii) committed any act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with County, any other public entity or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same; (iii) committed an act or offense which indicates a lack of business integrity or business honesty; or (iv) made or submitted a false claim against County or any other public entity.

39.4 **CONTRACTOR HEARING BOARD**

39.4.1 If there is evidence that Contractor may be subject to debarment, County's Project Director, or his/her designee, will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before County's Contractor Hearing Board.

39.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an

opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor, County's Project Director, or his/her designee, and County's departments shall be provided with an opportunity to object to the tentative proposed decision prior to its presentation to County's Board of Supervisors.

- 39.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to County's Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 39.4.4 If Contractor has been debarred for a period longer than five (5) years, then Contractor may, after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that such Contractor has adequately demonstrated one or more of the following: (i) elimination of the grounds for which the debarment was imposed; (ii) a bona fide change in ownership or management; (iii) material evidence discovered after debarment was imposed; or (iv) any other reason that is in the best interests of County.
- 39.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where (i) the requesting contractor has been debarred for a period longer than five (5) years, (ii) the debarment has been in effect for at least five (5) years and (iii) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- 39.4.6 The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to County's Board of Supervisors. County's Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### 39.5 SUBCONTRACTORS OF CONTRACTOR

The terms and procedures of this Paragraph 39 shall also apply to subcontractors, consultants and partners of Contractor performing work under this Agreement.

#### **40. FEDERAL ACCESS TO RECORDS**

If, and to the extent that Section 1861(v)(1)(I) of the Social Security Act (42 United States Code Section 1395x(v)(1)(i) is applicable, Contractor agrees that for a period of four (4) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the contracts, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services described in 42 United States Code

Section 1395 through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

**41. REQUIRED CERTIFICATIONS**

Contractor shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates required by all Federal, State, and local laws, ordinances, rules, regulations, guidelines and directives, which are applicable to Contractor's provision of the Services under this Agreement. Contractor shall further ensure that all of its officers, employees, agents and subcontractors who perform Services hereunder, shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditations and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation and certificate required by all applicable Federal, State, and local laws, ordinances, rules, regulations, guidelines and directives shall be provided, if required by law, in duplicate, to County's Project Manager at the address set forth in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

**42. NO THIRD PARTY BENEFICIARIES**

Notwithstanding any other provision of this Agreement, Contractor and County do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement, except that this provision shall not be construed to diminish Contractor's indemnification obligations hereunder.

**43. CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER**

Contractor recognizes that County provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Agreement, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible without related danger to Contractor's or subcontractors' employees and suppliers. During any such event in which the health or safety of any of Contractor's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely.

**44. WARRANTY AGAINST CONTINGENT FEES**

- 44.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.
- 44.2 For breach of this warranty, County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the fees owed, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.



**45. SAFELY SURRENDERED BABY LAW**

**45.1 NOTICE**

As required by applicable law, Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrender Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at <http://babysafela.org> for printing purposes.

**45.2 ACKNOWLEDGMENT OF COMMITMENT**

Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is County's policy to encourage all County Contractors to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at Contractor's place of business. Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. County's Department of Children and Family Services will supply Contractor with the poster to be used.

**46. COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM**

**46.1 JURY SERVICE PROGRAM**

This Agreement is subject to the provisions of County's ordinance entitled Contractor Employee Jury Service Program (hereinafter "Jury Service Program" or "Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code (hereinafter "County Code").

**46.2 WRITTEN EMPLOYEE JURY SERVICE POLICY**

46.2.1 Unless Contractor has demonstrated to County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees (as defined in Paragraph 46.2.2 below) shall receive from Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the Employee's regular pay the fees received for jury service.

46.2.2 For purposes of this Paragraph 46, "Contractor" means a person, partnership, corporation or other entity which has an agreement with County or a subcontract with Contractor and has received or will receive an aggregate sum of \$50,000 or more in any twelve (12) month period under one or more County agreements or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Contractor has a longstanding practice that defines the lesser number of hours as fulltime. Fulltime employees providing short term, temporary services of ninety (90) days or less within a twelve (12) month period are not considered fulltime for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for County under this Agreement, the subcontractor shall also be subject to the provisions of this Paragraph 46. The provisions of this Paragraph 46 shall be inserted into any such subcontract and a copy of the Jury Service Program shall be attached to the agreement.

46.2.3 If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program’s definition of “Contractor” or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during this Agreement and at its sole discretion, that Contractor demonstrate to County’s satisfaction that Contractor either continues to remain outside of the Jury Service Program’s definition of “Contractor” and/or that Contractor continues to qualify for an exception to the Program.

46.2.4 Contractor’s violation of this Paragraph 46 of this Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate this Agreement with Contractor and/or bar Contractor from the award of future County agreements for a period of time consistent with the seriousness of the breach.

**47. CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM**

47.1 Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through County agreements are in compliance with their court ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

47.2 As required by County’s Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor’s duty under this Agreement to comply with all applicable provisions of State and Federal law, Contractor warrants that to the best of its knowledge it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653(a)) and California Unemployment Insurance Code Section 1088.5, and shall, implement all lawfully served Wage and Earnings Withholding Orders or County’s Child Support Services Department Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**48. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 47 (Contractor’s Warranty of Adherence to County’s Child Support Compliance Program) shall constitute a default by Contractor under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by County’s Child Support Services Department shall be grounds upon which the Auditor-Controller or County’s Board of Supervisors may terminate this Agreement pursuant to Paragraph 20 (Termination for Default) and pursue debarment of Contractor pursuant to Paragraph 39 (Contractor Responsibility and Debarment).

**49. CHARITABLE ACTIVITIES COMPLIANCE [IF APPLICABLE]**

The Supervision of Trustees and Fundraisers for Charitable Purposes Act regulates entities receiving or raising charitable contributions. The “Nonprofit Integrity Act of 2004” (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. Contractor shall complete the certification in Exhibit J (Charitable Contributions Certification). By requiring

contractors to complete the certification in Exhibit J (Charitable Contributions Certification), County seeks to ensure that all County contractors which receive or raise charitable contributions comply with the California law in order to protect County and its taxpayers. By receiving or raising charitable contributions without complying with its obligations under California law, Contractor commits a material breach of this Agreement, subjecting it to either Agreement termination or debarment proceedings or both (County Code Chapter 2.202).

**50. DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

**50.1 CONTRACTOR’S WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses who benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.

**50.2 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 50.1 (Contractor’s Warranty of Compliance with County’s Defaulted Property Tax Reduction Program) shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within ten (10) days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Contractor pursuant to County Code Chapter 2.206.

**51. SHRED DOCUMENTS**

Contractor shall ensure that all confidential documents/papers, as defined under State law (including, but not limited to Welfare & Institutions Code Sections 10850, 17006) relating to this Agreement must be shredded and not put in trash containers when Contractor disposes of these documents/papers. All documents/papers to be shredded are to be placed in a locked or secured container/bin/box and labeled “shred” until they are destroyed. No confidential documents/papers are to be recycled.

Documents for record and retention purposes in accordance with Paragraph 29 (Records and Audits) of this Agreement are to be maintained for a period of five (5) years.

**52. COUNTY AUDIT SETTLEMENTS**

If, at any time during or after the term of this Agreement, representatives of County conduct an audit of Contractor regarding the work performed under this Agreement, and if such audit reasonably and accurately find that County’s dollar liability for such work is less than payments made by County to Contractor, then the difference, together with County’s reasonable costs of audit, shall be either repaid by Contractor to County by cash payment upon demand or deducted from any amounts due to Contractor from County, as determined by County. If such audit finds County’s dollar liability for such work is more than payments

made by County to Contractor, then the difference shall be repaid to Contractor by cash payment.

**53. DISPUTE RESOLUTION PROCEDURE**

- 53.1 Contractor and County agree to act immediately to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Paragraph 53 (such provisions shall be collectively referred to as the “Dispute Resolution Procedure”). Time is of the essence in the resolution of disputes.
- 53.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder.
- 53.3 Neither party shall delay or suspend its performance during the Dispute Resolution Procedure.
- 53.4 In the event of any dispute between the parties with respect to this Agreement, Contractor and County shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 53.5 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties’ respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
- 53.6 In the event that the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to Contractor’s Project Executive and the Director. These persons shall have ten (10) days to attempt to resolve the dispute.
- 53.7 In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law.
- 53.8 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Paragraph 53, the efforts to resolve a dispute shall be undertaken by conference between the parties’ respective representatives, either orally, by face to face meeting or by telephone, or in writing by exchange of correspondence.
- 53.9 Notwithstanding the foregoing, in the event of County’s infringement of Contractor’s intellectual property rights under the Agreement or violation by either party of the confidentiality obligations hereunder, the violated party shall have the right to seek injunctive relief against the other without waiting for the outcome of the Dispute Resolution Procedure.
- 53.10 Notwithstanding any other provision of this Agreement, County’s right to seek injunctive relief to enforce the provisions of Paragraph 18 (Confidentiality and Security) shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of County’s rights and shall not be deemed to impair any claims that County may have against Contractor or County’s rights to assert such claims after any such injunctive relief has been obtained.

**54. ASSIGNMENT BY COUNTY**

This Agreement may be assigned in whole or in part by County, without the further consent of Contractor, to a party which is not a competitor of Contractor and which agrees in writing to perform County's obligations under this Agreement.

**55. NEW TECHNOLOGY**

Contractor and County acknowledge the probability that the technology of the software and hardware which comprise the System will change and improve during the term of this Agreement. County desires the flexibility to incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager shall, promptly upon discovery and on a continuing basis, apprise County's Project Director of all new technologies, methodologies and techniques which Contractor considers to be applicable to the System. Specifically, upon County's request, Contractor shall provide, in writing, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the System, and provide an estimate of the impact such incorporation will have on the performance, scheduling and price of the System. County, at its sole discretion, may request that this Agreement be amended to incorporate the new technologies, methodologies and techniques into the System pursuant to the provisions of Paragraph 4 (Changes Notices and Amendments).

**56. NON-DISCRIMINATION IN SERVICES**

56.1 Contractor shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, or physical or mental handicap, in accordance with all applicable requirements of Federal and State law. For the purpose of this Paragraph 56, discrimination in the provision of services may include, but is not limited to, the following: denying any person any service or benefit or the availability of the facility, providing any service or benefit to any person which is not equivalent or is not provided in an equivalent manner or at an equivalent time to that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit.

56.2 Contractor shall ensure that recipients of services under this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap.

**57. UNLAWFUL SOLICITATION**

Contractor shall inform all of its employees who provide services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of such provisions by its employees.

**58. GOVERNING LAW, JURISDICTION AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California applicable to agreements made and to be performed

within the State. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California. For claims that are subject to exclusive Federal subject matter jurisdiction, Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California.

**59. WAIVER**

No breach of any provision hereof can be waived unless in writing. No waiver by County or Contractor of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of County or Contractor to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**60. AUTHORIZATION WARRANTY**

Contractor and County represent and warrant that the person executing this Agreement or any Amendment thereto pursuant to Paragraph 4 (Changes Notices and Amendments) on its behalf is an authorized agent who has actual authority to bind it to each and every term, condition and obligation of this Agreement, and that all requirements of Contractor and County have been fulfilled to provide such actual authority.

**61. VALIDITY AND SEVERABILITY**

**61.1 VALIDITY**

The invalidity of any provision of this Agreement shall not render the other provisions hereof invalid, unenforceable or illegal, unless the essential purposes of this Agreement shall be materially impaired thereby.

**61.2 SEVERABILITY**

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, if practicable, and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid in its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If any provision of this Agreement is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective.

**62. NOTICES**

**62.1** All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered: (i) by hand with signed receipt; (ii) by first class registered or certified mail, postage prepaid; or (iii) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed

by timely confirmation mailing. Addresses may be changed by either party by giving ten (10) days prior written notice thereof to the other party.

62.2 Director shall have the authority to issue all notices or demands which are required or permitted to be issued by County under this Agreement.

62.3 To County, notices shall be sent to the attention of County's Project Manager and County's Project Director at the respective addresses specified in Section 1 (County Key Personnel) of Exhibit E (Administration of Agreement).

To Contractor, notices shall be sent to the attention of Contractor's Project Manager at the address specified in Section 2 (Contractor Key Personnel) of Exhibit E (Administration of Agreement), with a copy to Contractor's Project Executive.

62.4 Each party may change the names of the people designated to receive notices pursuant to this Paragraph 62 by giving written notice of the change to the other party, subject to County's right of approval in accordance with Paragraph 3.3 (Approval of Contractor's Staff).

### **63. ARM'S LENGTH NEGOTIATIONS**

This Agreement is the product of arm's length negotiations between Contractor and County, with each party having had the opportunity to receive advice from and representation by independent counsel of its own choosing. As such, the parties agree that this Agreement is to be interpreted fairly as between them and is not to be strictly construed against either as the drafter or otherwise.

### **64. NON-EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Agreement shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

### **65. CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings used in this Agreement are for convenience only, are not a part of this Agreement, and shall not be used in construing this Agreement. If there is a conflict when referencing a Paragraph in this Agreement, between the Paragraph heading title and its number, the Paragraph heading title shall control.

### **66. FORCE MAJEURE**

Neither party shall be liable for failure to perform under this Agreement, if its failure to perform arises out of, and only, fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes or freight embargoes, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of the non-performing party.

### **67. FORMS AND PROCEDURES**

All existing forms and procedures used by Contractor in implementation of the provisions of this Agreement are deemed "approved" by County for purposes of this Paragraph 67. Any new forms and procedures which materially affect Contractor's performance of this Agreement shall be subject to review and approval by County prior to use by Contractor.

### **68. DAMAGE TO COUNTY FACILITIES, BUILDINGS AND GROUNDS**

68.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor.

Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

- 68.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand or, without limitation of all County's other rights and remedies provided by law or under this Agreement, County may deduct such costs from any amounts due Contractor from County under this Agreement.

**69. MINIMUM AGE, LANGUAGE SKILLS AND LEGAL STATUS OF CONTRACTOR PERSONNEL AT FACILITY**

Contractor cannot assign employees under the age of eighteen (18) to perform work under this Agreement. All of Contractor's employees working at County facilities must be able to communicate in English. Contractor's employees must be United State citizens or legally present and permitted to work in the United States.

**70. NOTICE OF DELAYS**

Exception as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five (5) Business Days, give notice thereof, including all relevant information with respect thereto, to the other party.

**71. RE-SOLICITATION OF BIDS AND PROPOSALS**

- 71.1 Contractor acknowledges that, prior to the expiration or earlier termination of this Agreement, County, in its sole discretion, may exercise its right to invite bids or request proposals for the continued provision of the goods and services delivered or contemplated under this Agreement. County shall make the determination to re-solicit bids or request proposals in accordance with applicable County policies.
- 71.2 Contractor acknowledges that County, in its sole discretion, may enter into an agreement for the future provision of goods and services, based upon the bids or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future invitation for bids or request for proposals by virtue of its present status as Contractor.

**72. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION OR TERMINATION OF AGREEMENT**

Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any services provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment, it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Contractor. The provisions of this Paragraph 72 shall survive the expiration or other termination of this Agreement.

**73. ACCESS TO COUNTY FACILITIES**

Contractor, its employees and agents, may be granted access to County facilities, subject to Contractor's prior notification to County's Project Manager, for the purpose of executing Contractor's obligations hereunder. Access to County facilities shall be restricted to normal business hours, 8:00 a.m. until 5:00 p.m., Pacific Time, Monday through Friday, County



observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by County's Project Manager, which approval will not be unreasonably withheld. Contractor shall have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Contractor's personnel shall be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County's Project Manager.

**74. COUNTY FACILITY OFFICE SPACE**

In order for Contractor to perform Services hereunder and only for the performance of such Services, County may elect, subject to County's standard administrative and security requirements, to provide Contractor with office space and equipment, as determined at the discretion of the applicable County's Project Manager at County facilities, on a non-exclusive use basis. County shall also provide Contractor with reasonable telephone service in such office space for use only for purposes of this Agreement. County disclaims any and all responsibility for the loss, theft or damage of any property or material left at such County office space by Contractor.

**75. PHYSICAL ALTERATIONS**

Contractor shall not in any way physically alter or improve any County facility without the prior written approval of the Director, County's Project Director and the Director of County's Internal Services Department, in their discretion.

**76. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE**

Contractor shall use reasonable efforts to ensure that no employee of Contractor shall perform services hereunder while under the influence of any alcoholic beverage, medication, narcotic or other substance which might impair his or her physical or mental performance.

**77. RECYCLED PAPER**

Consistent with the County's Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible in this project.

**78. SURVIVAL**

In addition to any provisions in this Agreement which specifically state that they shall survive the termination or expiration of the Agreement, the provisions in the following Paragraphs shall also survive the expiration or termination of this Agreement for any reason:

- 2.4 Approval of Work
- 9.5 County's Right to Withhold Payment
- 10 System Ownership and License
- 12 Warranties and Correction of Deficiencies
- 13 Indemnification
- 14 Insurance
- 15 Intellectual Property Warranty and Indemnification

16	Proprietary Considerations
17	Disclosure of Information
18	Confidentiality and Security
20	Termination for Default
21	Termination for Convenience
22	Termination for Improper Consideration
23	Termination for Insolvency
29	Records and Audits
32	Compliance with Applicable Laws
33	Fair Labor Standards
36	Employment Eligibility Verification
40	Federal Access to Records
42	No Third Party Beneficiaries
52	County Audit Settlements
58	Governing Law, Jurisdiction and Venue
51	Shred Documents
61	Validity and Severability

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IN WITNESS WHEREOF, County and Contractor by their duly authorized signatures have caused this Agreement to be effective on the day, month and year first above written.

**COUNTY OF LOS ANGELES:**  
Community and Senior Services

By

\_\_\_\_\_  
CYNTHIA D. BANKS  
Director

**CONTRACTOR:**

\_\_\_\_\_

By

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Title \_\_\_\_\_

APPROVED AS TO FORM:

Andrea Sheridan Ordin  
County Counsel

By \_\_\_\_\_

VICTORIA MANSOURIAN  
Deputy County Counsel

**EXHIBIT A**  
**STATEMENT OF WORK**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**SEE APPENDIX B TO RFP**

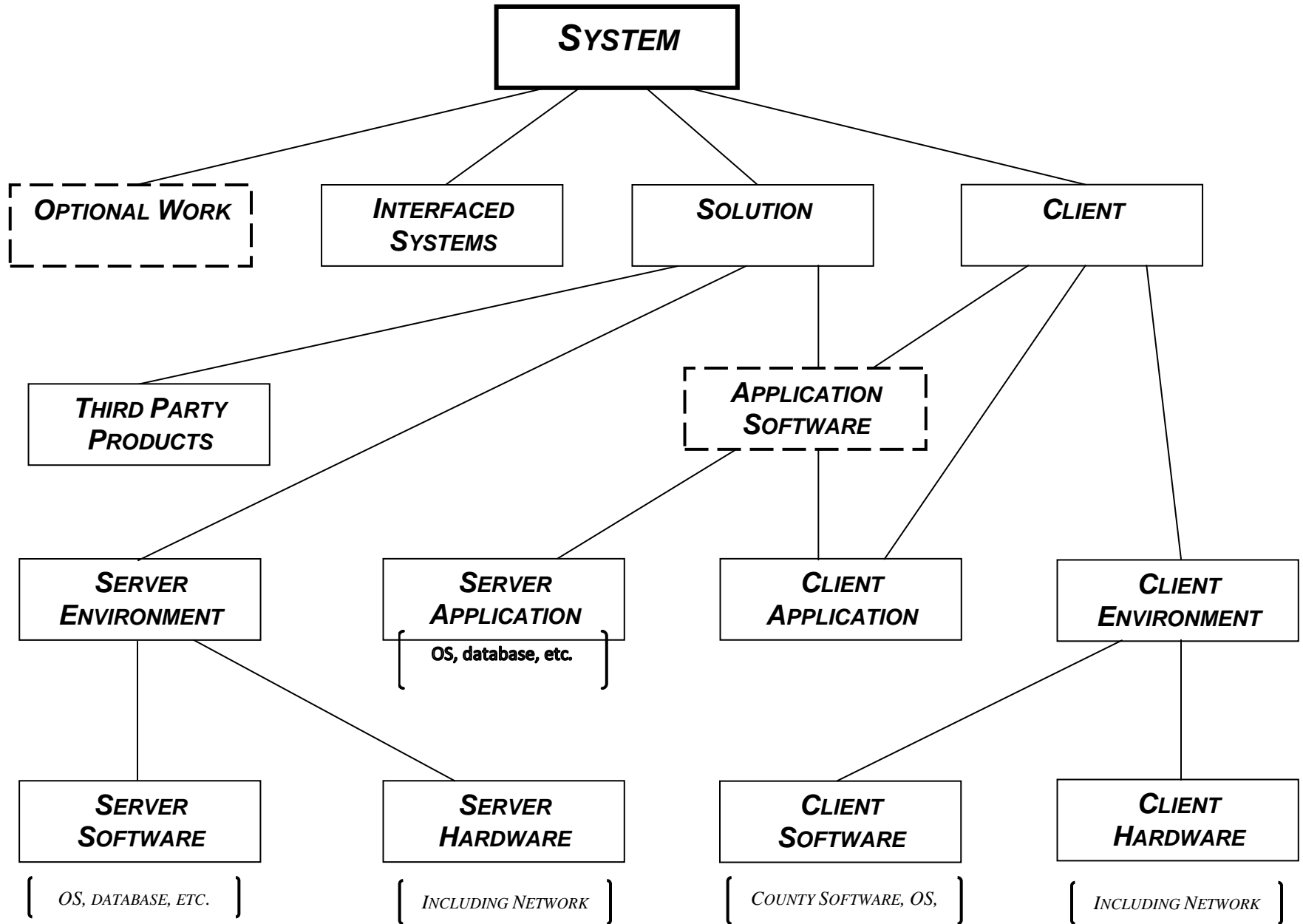
**ATTACHMENT A.1**  
**SYSTEM REQUIREMENTS**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**TO BE DETERMINED**

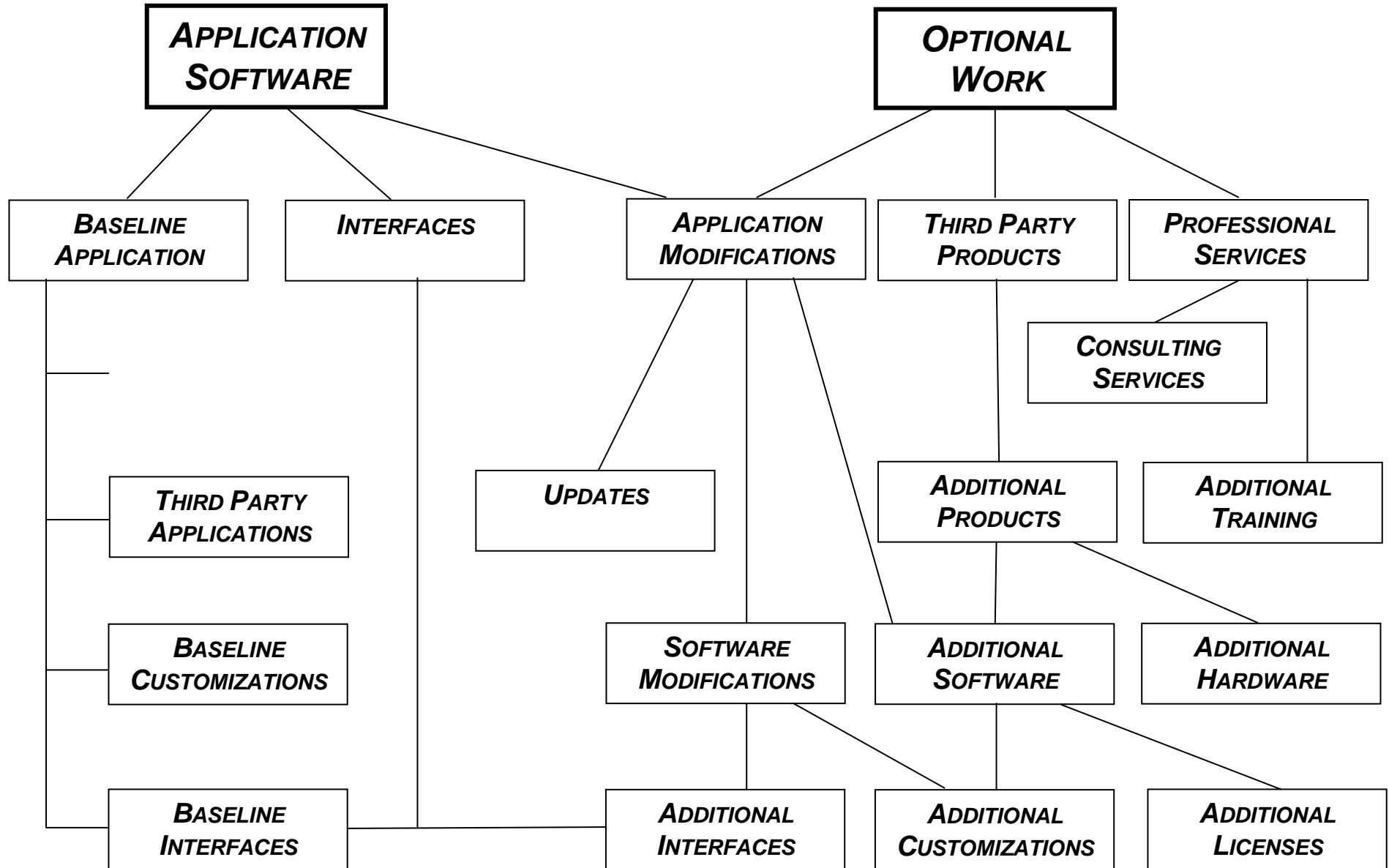
**ATTACHMENT A.2**  
**SYSTEM CONFIGURATION**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**JANUARY 2012**

ATTACHMENT A.2  
SYSTEM CONFIGURATION



ATTACHMENT A.2  
SYSTEM CONFIGURATION





**EXHIBIT B**  
**PRICING SCHEDULE**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**TO BE DETERMINED**

**SCHEDULE B.1**  
**OPTIONAL WORK SCHEDULE**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**TO BE DETERMINED**

**EXHIBIT C**  
**PROJECT SCHEDULE**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**TO BE DETERMINED**

**EXHIBIT D**  
**SERVICE LEVEL AGREEMENT**  
*for*  
**COMMUNITY AND SENIOR CENTER**  
**AUTOMATION SOLUTION**

**JANUARY 2012**

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**1. GENERAL**

This Exhibit D sets forth the scope of, and Contractor's service level commitment regarding, the maintenance, operational support, hosting and monitoring of the Solution, including, but not limited to, service levels consisting of Maintenance Services, Support Services, correction of Deficiencies, Warranties and County's remedies for Contractor's failure to meet the service level commitment specified herein. Capitalized terms used in this Exhibit D without definition shall have the meanings given to such terms in the Base Agreement.

The following Schedules are attached to and form a part of this Exhibit D:

*Schedule D.1 – Network Data Classification Standard*

*Schedule D.2 – IT Confidentiality and Acceptable Use Agreement (County of Los Angeles Agreement for Acceptable Use and Confidentiality of County's Information Technology Assets, Computers, Networks, System and Data)*

**2. SCOPE OF SERVICES**

**2.1 DESCRIPTION**

Contractor shall provide service levels relating to System Maintenance specified in the Base Agreement and this Exhibit D, as more fully described below. System Maintenance shall include Maintenance Services and Support Services. System Maintenance shall commence upon Go-Live of the Solution and shall continue for the term of the Agreement.

**2.2 DEFINITIONS**

**"Business Hours"** shall mean 8:00 a.m. to 5:00 p.m. Pacific Time (PT) Monday through Friday except for County approved holidays.

**"Critical Deficiency"** shall mean a Deficiency of Priority Level 1, as further described in Section 5.2.1 (Problem Correction Priorities).

**"Customer Support"** shall have the meaning specified in Section 4.1 (Scope of Support).

**"Days of Operation"** shall mean 365/366 days per year, 6:00 a.m. to 9:00 p.m. Pacific Time (PT), excluding County recognized holidays and "Scheduled Downtime".

**"Disabling Device"** shall the meaning specified in Section 6.1 (General Warranties).

**"Disaster"** shall mean a catastrophic event that results in significant or potentially significant Downtime or disruption of the Production Environment and requires Contractor to invoke the Disaster Recovery Plan.

**"Disaster Recovery"** shall mean and refer to Contractor's obligations described in Section 4.5 (Backup and Disaster Recovery).

**"Disaster Recovery Plan"** shall have the meaning specified in Section 4.5 (Backup and Disaster Recovery).

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**“Downtime”** shall mean the period of time when the Solution or any Solution component is unavailable, including Unscheduled Downtime and Scheduled Downtime.

**“Low Deficiency”** shall mean a Deficiency of Priority Level 4, as further described in Section 5.2.1 (Problem Correction Priorities).

**Maintenance Services** shall mean any goods or services provided under this Agreement for maintaining the Solution, including but not limited to updates, corrections, enhancements and other Updates to the Solution, interfaces, data extractions, system availability, data security and reports, as further specified in Section 3 (Maintenance Services).

**“Major Deficiency”** shall mean a Deficiency of Priority Level 1 or Priority Level 2, as further described in Section 5.2.1 (Problem Correction Priorities).

**“Moderate Deficiency”** shall mean a Deficiency of Priority Level 3, as further described in Section 5.2.1 (Problem Correction Priorities).

**“Monthly Fee(s)”** shall mean 1/12<sup>th</sup> of the Annual Fees as specified in Exhibit B Pricing Schedule.

**“Off-Business Hours”** shall mean all hours that are not Business Hours or Scheduled Downtime.

**“Peak Period”** shall mean the combined times of 10:00 a.m. to 2:00 p.m. and 2:00 p.m. to 4:00 p.m. Pacific Time (PT) Monday through Friday except for County approved holidays.

**“Priority Level”** shall mean the applicable Deficiency severity level for correcting Deficiencies, as described in Section 5.2 (Resolution of Deficiencies).

**“Response Time”** shall mean the time elapsed for a transaction within the hosted gateway, as may be further specified in Attachment A.1 (System Requirements) and this Exhibit D.

**“Response Time Baseline”** shall mean the County specified baseline for Response Time, as further described in this Exhibit D, established in accordance with Subtask 3.1 (Establish Response Time Baseline and Method) of Exhibit A (Statement of Work).

**“Response Time Deficiency”** shall mean System not responding within the prescribed Response Time Baseline, as further described in Section 6.3 (System Performance Requirements).

**“Scheduled Downtime”** shall mean the Solution cannot be accessed due to System scheduled maintenance, including but not limited to preventive maintenance, updates, upgrades, scheduled reboots and restarts, as further described in Section 3.2 (Scheduled Downtime).

**“Service Credits”** shall mean credits or any other form of discount to be applied to the applicable Maintenance Fees for Contractor’s failure to timely correct Deficiencies as specified in this Exhibit D.

**“Service Level Agreement”; “SLA”** shall mean and refer to Contractor’s service level commitment regarding System Maintenance as required by the Agreement and this Exhibit D, including but not limited to Maintenance Services, Support Services and warranties specified herein.

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**“Severe Deficiency”** shall mean a Deficiency of Priority Level 2, as further described in Section 5.2.1 (Problem Correction Priorities).

**“Support Hours”** shall have the meaning specified in Section 4.2 (Customer Support).

**“Support Services”** shall mean any goods or services provided under this Agreement in support of the Solution, including but not limited to updates, corrections, enhancements, customer support, interfaces, data extractions, system availability, data security, reports and any applicable regulatory compliance, as further specified in Section 4 (Support Services).

**“System Availability”** shall mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the Total Monthly Time and thereafter dividing the difference so obtained by the Total Monthly Time.

**“System Availability Deficiency”** shall mean the System not meeting any of the System Availability requirements as specified in this Exhibit D.

**“System Performance”** shall mean the performance of the System with respect to Response Time, System Availability and Disaster Recovery.

**“System Performance Deficiency”** shall mean System not meeting any of the System Performance Requirements as specified in Section 6.3 (System Performance Requirements).

**“System Performance Requirements”** shall mean the requirements for System Performance, including Section 6.3 (System Performance Requirements).

**“Total Monthly Time”** shall mean all minutes in the Days of Operation for a calendar month, excluding Scheduled Downtime.

**“Unscheduled Downtime”** shall have the meaning specified in Section 7.2 (Service Credits).

### **3. MAINTENANCE SERVICES**

As part of System Maintenance, Contractor shall provide maintenance of the System including the provision of Updates (hereinafter “Maintenance Services”), as provided in this Section 3.

#### **3.1 SOLUTION MAINTENANCE**

##### **3.1.1 APPLICATION SOFTWARE**

Contractor shall provide Updates to the Application Software to keep current with Contractor’s hosting technology standards, industry standards, Third Party Software upgrades, enhancements, updates, patches, bug fixes, etc., the System Requirements and as provided to Contractor’s general customer base in accordance with this Exhibit D, all in coordination with County’s Project Manager. By definition, such Updates shall include, but not be limited to, enhancements, Version Releases and other improvements and modifications to the Solution Software, including Application Software.

Without limiting the other provisions of this Agreement, including, without limitation, this Exhibit D, such Updates shall be provided to County at least twice every year, unless otherwise agreed to by County and Contractor. Contractor shall notify County of all such

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Updates to the Application Software prior to the anticipated installation date thereof. Contractor's provision and installation of such Updates to the Application Software shall be at no additional cost to County beyond any applicable Maintenance Fees. Any Updates necessary to remedy security problems in the Application Software (e.g., closing "back doors" or other intrusion-related problems) shall be provided promptly following Contractor's knowledge of such problems. County shall also be notified in writing within five (5) calendar days of Contractor's knowledge of the existence of any intrusions or other security problems or breaches that may affect the integrity of the Solution Data or any other County data, subject to the provisions of Paragraph 18 (Confidentiality and Security) of the Base Agreement.

#### 3.1.2 SERVER SOFTWARE

As part of Maintenance Services, Contractor shall provide maintenance of the Server Software comprising the Server Environment for the Solution, including but not limited to Operating Software, database software and other software installed in the Server Environment that is not Application Software. Contractor shall update, upgrade or replace these Server Software components during the term of the Agreement to comply with the System Requirements and the warranties specified in this Agreement and to support and be compatible with the Application Software including any Application Modifications provided by Contractor under the Agreement.

Contractor shall provide Updates to the Server Software to keep current with Contractor's hosting technology standards, industry standards, Updates to the Application Software and other Application Modifications, all in coordination with County's Project Manager.

#### 3.1.3 THIRD PARTY PRODUCTS

Maintenance Services additionally include maintaining compatibility of the Solution Software with any Third Party Products that may be acquired by County under this Agreement as Optional Work, including Third Party Software and Additional Hardware. Prior to the installation of any Third Party Product, or any update thereto, Contractor shall test and ensure such Third Party Product's compatibility with the then current version of the Solution Software. Contractor shall all ensure that the Solution Software is compatible with the required or critical updates to Third Party Products, including without limitation, service and compatibility packs and security patches, promptly upon their release.

Notwithstanding the foregoing, any Third Party Application that may be incorporated by Contractor, and shall become part of, the Application Software shall be subject to the same System Maintenance obligations and requirements as the Application Software components that are owned or are proprietary to Contractor.

#### 3.1.4 SERVER HARDWARE

As part of Maintenance Services, Contractor shall provide maintenance of the Server Hardware components surrounding the Solution Software, including but not limited to all equipment and networking components. Contractor shall repair, upgrade or replace these Server Hardware components during the term of the Agreement to comply with the System Requirements and the warranties specified in this Agreement and to support and be

compatible with the Solution Software including any Application Modifications provided by Contractor under the Agreement.

3.1.5 CLIENT ENVIRONMENT

As part of Maintenance Services, Contractor shall maintain the Solution's compatibility with the Client Environment recommended and approved by Contractor by providing, among others, Updates to the Solution Software and upgrading the Server Hardware during the term of the Agreement and following any update and/or upgrade by County of such Client Environment.

3.2 SCHEDULED DOWNTIME

Unless agreed to otherwise in advance by County and Contractor, Contractor shall provide all Maintenance Services, including installation of Updates, during Scheduled Downtime.

For the purpose of this Exhibit D, Scheduled Downtime shall occur on Sundays between the hours of 3:00 p.m. and 9:00 p.m. Pacific Time (PT). Contractor may change the Scheduled Downtime window by notifying County at least three (3) days prior to modifying the Scheduled Downtime, subject to approval by County's Project Manager. Any Downtime outside of the above window of time without such prior notice and County's Project Manager's approval shall be considered Unscheduled Downtime and shall entitle County to remedies as specified in this Exhibit D. Notwithstanding the foregoing, Contractor may request Solution Downtime for the provision of an emergency correction to the Solution. Such Downtime shall be deemed Scheduled Downtime, provided that it has been approved by County's Project Manager.

**4. SUPPORT SERVICES**

4.1 SCOPE OF SUPPORT

Contractor's responsibilities for supporting the operation of the Solution (hereinafter "Support Services") shall include responding to problems reported and correcting Deficiencies as specified in this Exhibit D. As part of its Support Services, Contractor shall provide operational support for the Solution during the Support Hours, which shall include without limitation providing a point of contact for all System problems by maintaining a system for customer support ("Customer Support"). Such operational support shall include Support Services to correct any failure of the Solution and to remedy Deficiencies in accordance with Section 5 (Correction of Deficiencies) to ensure that the Solution operates in accordance with the Specifications, including System Requirements, warranties and other requirements under the Agreement. Requests for Customer Support will be submitted by County's technical support via telephone and/or Contractor's web-based trouble ticketing system. In the event that the Contractor's web-based trouble ticketing system is not available County, County may use email or any other reasonable means to request Customer Support. Customer Support shall respond with a plan for resolving each Deficiency and respond to County's Project Manager within the applicable required period specified in Section 5.2.1 (Problem Correction Priorities) depending on the Priority Level of the Deficiency.

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## 4.2 CUSTOMER SUPPORT

In addition to the requirements specified in Attachment A.1 (System Requirements), Contractor's Customer Support service level requirements shall also include but not be limited to those listed below:

1. County designated technical support staff that provides First Level Support shall have access to Contractor's Customer Support through the methods outlined in this Exhibit D.
2. County shall have access to Contractor's Customer Support through the web-based trouble ticketing system or telephone. The trouble ticketing system shall provide for County a simple method to submit, track and update issues that require escalation to Contractor's Customer Support. The authorized County contacts will each receive an account and training on the ticketing system.
3. Contractor shall provide a telephone number ((xxx) xxx-xxxx) for County staff to call during normal Business Hours. This telephone number shall be managed by an automated system to quickly connect County staff with the appropriate Customer Support personnel.
4. Contractor's automated system shall include the functionality of leaving detailed voice mails describing the issues. The voice mails must be responded to within 24 to 48 hours (excluding weekends and holidays).
5. Priority Levels for the Deficiencies shall be assigned according to definitions specified in Section 5.2.1 (Problem Correction Priorities).
6. Contractor shall respond within the period specified in Section 5.2.1 (Problem Correction Priorities) depending on the Priority Level of the Deficiency.
7. Contractor's Customer Support shall be made available to County between 8 a.m. and 5 p.m. Pacific Time (PT), Monday through Friday, excluding County observed holidays ("Support Hours").
8. Contractor's Customer Support shall work with County's Project Manager and County's technical support staff on correcting Deficiencies and keep such County personnel informed regarding the updates and scheduled timeframes to ensure that all maintenance windows are clearly communicated and the requirements of this Exhibit D are met.
9. Contractor shall triage and update submitted Deficiencies and requests to have the priority, description, type, version and other elements of each case modified by Customer Support based on the severity and business impact. The cases may be downgraded or upgraded in priority, and Contractor shall work with County to ensure that the case is diagnosed properly. In the event of any issues regarding a case, the parties may invoke the Dispute Resolution Procedure as defined in the Base Agreement.
10. Deficiency correction, timeframes and Service Credits for failure to timely correct any Deficiencies as specified herein shall be as specified in Section 5 (Correction of Deficiencies).
11. Enhancement suggestions to the Solution shall be submitted using Contractor's Customer Support ticketing system. Contractor shall conduct a preliminary evaluation within thirty

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(30) days and update the ticket with that preliminary evaluation. Contractor shall use this information in product enhancement planning.

#### 4.3 SOLUTION DATA EXTRACTION

As part of Support Services, Contractor shall be responsible for the periodic extraction of the Solution Data from the Solution onto County's Data Warehouse. The extraction of the Solution Data and reference tables shall be executed weekly, unless otherwise elected by County, consistent with Task 7 (Solution Data Extraction) of Exhibit A (Statement of Work). Solution Data extraction shall be highly automated and shall be subject to the criteria specified in Attachment A.1 (System Requirements). Failure to deliver the Solution Data extraction as required more frequently than specified by extract option table below shall be deemed at a minimum a Priority Level 2 Deficiency. Solution Data extraction shall be performed by Contractor at no additional cost beyond the applicable Maintenance Fees.

EXTRACT OPTION TABLE

<i>County Selected Data Extraction Option</i>	<i>Priority Level 2 Deficiency for Failure to Deliver at Required Frequency</i>
<i>DAILY</i>	<i>ONCE PER WEEK</i>
<i>WEEKLY</i>	<i>ONCE PER MONTH</i>
<i>MONTHLY</i>	<i>ONCE PER QUARTER (3 MONTHS)</i>
<i>DIRECT ACCESS</i>	<i>ONCE PER WEEK</i>

#### 4.4 RESPONSE TIME MONITORING

Contractor shall be responsible for monitoring Response Time of the System to ensure compliance with Subtask 3.1 (Establish Response Time Baseline and Method) of Exhibit A (Statement of Work), including the agreed upon Response Time Baseline(s) and any other applicable requirements specified in Attachment A.1 (System Requirements) and this Exhibit D.

Contractor shall perform Response Time monitoring at regular intervals and in sufficient detail to detect problems. Contractor shall provide County with direct access at any time to the data collected as a result Response Time monitoring. Whenever requested by County, Contractor shall provide County with reports and/or download that data along with all applicable documentation that may be necessary for County to independently monitor the Response Time of the System.

County reserves the right to periodically revisit the Response Time Baselines for resetting to ensure that the Response Time of the Solution does not restrict or delay County's operations.

#### 4.5 BACKUP AND DISASTER RECOVERY

As part of Support Services, Contractor shall also be responsible for Disaster Recovery services and submission of a formal plan for Disaster Recovery (“Disaster Recovery Plan”) as required by the provisions of Exhibit A (Statement of Work).

Contractor or County may declare an event a Disaster. Upon occurrence of a Disaster, Contractor shall provide the services outlined in the Disaster Recovery Plan. Contractor shall be subject to the following service level requirements as part of Disaster Recovery, which shall be contained in and are incorporated into the Disaster Recovery Plan:

1. Contractor shall have complete responsibility for restoration of the Solution.
2. In the event of a Disaster declaration, Contractor shall be required to maintain regular and consistent communication with County about the outage and steps taken to restore the Solution.
3. Contractor shall be required to make a declaration of a Disaster and invoke the Disaster Recovery Plan within twelve (12) hours from the disruption of the Production Environment or precipitating event.
4. Contractor shall restore the Solution Data to a point no greater than twenty-four (24) hours prior to the declaration of the Disaster by County or Contractor.
5. County shall be able to logon to the Disaster Recovery site within forty-eight (48) hours of the declaration of the Disaster by County or Contractor.
6. Contractor shall have at a minimum 50% capacity within forty-eight (48) hours and 100% capacity within ninety-six (96) hours of the declaration of the Disaster by County or Contractor.
7. Contractor’s failure to make a declaration of a Disaster within twelve (12) hours shall result in the incident and deemed Unscheduled Downtime.

#### 5. **CORRECTION OF DEFICIENCIES**

##### 5.1 IDENTIFICATION OF DEFICIENCIES

The Deficiencies under this Agreement may be identified either as a result of Contractor’s use of its own monitoring system or discovered by County. Upon discovery of a Deficiency by County, County will report the Deficiency to Contractor’s Customer Support for resolution in accordance with this Exhibit D.

The Priority Level of a Deficiency shall be assigned according to the Priority Level definition set forth in Section 5.2.1 (Problem Correction Priorities). Based on Contractor’s proposed solution and/or workaround(s) for the Deficiency, County may reevaluate and escalate or downgrade the Priority Level of the Deficiency pursuant to Section 5.2.3 (Priority Level Adjustment).

## 5.2 RESOLUTION OF DEFICIENCIES

### 5.2.1 PROBLEM CORRECTION PRIORITIES

County shall assign the Priority Level to each Deficiency reported by County to Contractor's Customer Support. Contractor shall assign Priority Levels to Deficiencies discovered by its own problem monitoring system. Following report of a Deficiency from County, Contractor shall respond back to County within the prescribed "Response Timeframe" specified below and resolve each such Deficiency within the specified "Resolution Time". Resolution Time for correction of Deficiencies shall start tolling when County first notifies Contractor of a Deficiency by telephone or otherwise as specified herein, including Contractor's Customer Support, and shall end when County determines that the Deficiency has been resolved.

<i>Priority Level</i>	<i>Description of Deficiency</i>	<i>Response Timeframe</i>	<i>Resolution Time</i>
<i>1 - CRITICAL</i>	<i>SYSTEM IS DOWN, PRACTICALLY DOWN (E.G., RESPONSE TIME IS AT OR OVER FOUR (4) TIMES THE AGREED UPON RESPONSE TIME BASELINE) OR DOES NOT FUNCTION AT ALL, AS DETERMINED BY COUNTY. THERE IS NO WAY TO CIRCUMVENT THE PROBLEM; A SIGNIFICANT NUMBER OF COUNTY USERS ARE AFFECTED. A PRODUCTION BUSINESS SYSTEM IS INOPERABLE.</i>	<i>ONE (1) BUSINESS HOUR</i>	<i>ONE (1) BUSINESS DAY</i>
<i>2 – SEVERE</i>	<i>A COMPONENT OF THE SOLUTION IS NOT PERFORMING IN ACCORDANCE WITH THE SPECIFICATIONS (E.G., RESPONSE TIME IS AT TWO (2) OR THREE (3) TIMES THE AGREED UPON RESPONSE TIME BASELINE), CREATING SIGNIFICANT COUNTY BUSINESS IMPACT, OR ITS CORE FUNCTIONALITY IS NOT AVAILABLE, AS DETERMINED BY COUNTY.</i>	<i>FOUR (4) BUSINESS HOURS</i>	<i>TWO (2) BUSINESS DAYS</i>
<i>3 – MODERATE</i>	<i>A COMPONENT OF THE SOLUTION IS NOT PERFORMING IN ACCORDANCE WITH THE SPECIFICATIONS; THERE ARE UNEXPECTED RESULTS, MODERATE OR MINOR OPERATIONAL IMPACT, AS DETERMINED BY COUNTY.</i>	<i>ONE (1) BUSINESS DAY</i>	<i>TWO (2) WEEKS</i>
<i>4 – Low</i>	<i>THIS IS A LOW IMPACT PROBLEM AND IS NOT SIGNIFICANT TO OPERATIONS OR IS RELATED TO EDUCATION (E.G., GENERAL "HOW TO" AND INFORMATIONAL SOLUTION SOFTWARE QUESTIONS, DOCUMENTATION REQUESTS, UNDERSTANDING OF REPORTS OR GENERAL "HOW TO" CREATE REPORTS), AS DETERMINED BY COUNTY.</i>	<i>TWO (2) BUSINESS DAYS</i>	<i>NEXT VERSION RELEASE OR 6 MONTHS UNLESS OTHERWISE AGREED TO BY COUNTY AND CONTRACTOR</i>

### 5.2.2 PROBLEM RESOLUTION PROCESS

For any Deficiency reported by County or discovered by Contractor, Contractor shall immediately commence corrective action. Contractor shall correct all Deficiencies within the Resolution Times specified above. Contractor shall also immediately commence to develop a workaround or a fix for any Priority Level 1 or Priority Level 2 Deficiency.

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County and Contractor shall agree on the Deficiency resolution, whether by a permanent solution or a workaround.

Contractor shall provide the best level of effort to correct all Deficiencies and, in particular, Deficiencies with Priority Level 1 through Priority Level 3. In the event that Contractor fails to correct a Deficiency within the prescribed Resolution Time, Contractor shall provide County with a written or electronic report that includes a detailed explanation of the status of such Deficiency, preliminary actions taken, detailed mitigation plans and an estimated time for completing the correction of such Deficiency. This process will be repeated until the Deficiency is resolved and the resolution is approved by County's Project Manager. The parties will jointly cooperate during this period of time.

#### 5.2.3 PRIORITY LEVEL ADJUSTMENT

County may escalate or downgrade a Priority Level of a Deficiency if the Deficiency meets the definition of the Priority Level as escalated or downgraded. A Deficiency may also be mutually escalated by County if the Deficiency persists or re-occurs, as determined by County's Project Manager. At the time the Deficiency is escalated or downgraded, an appropriate timeline will be applied for resolution of such Deficiency in accordance with Section 5.2.1 (Problem Correction Priorities). Contractor may request a special exception to the above timeline where there are extenuating circumstances, with the decision for extension made at the discretion of County's Project Manager.

If a workaround may be provided by Contractor for a Deficiency, County and Contractor may agree to downgrade the Priority Level of such Deficiency until an agreed upon date. If a permanent fix is not provided by such agreed upon date, County will be able to escalate the Priority Level back to the Original Priority Level or higher, as provided herein.

### 6. **WARRANTIES**

#### 6.1 GENERAL WARRANTIES

Contractor represents, warrants, covenants and agrees that throughout the term of this Agreement:

1. Contractor shall comply with the description and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in this Agreement, including Exhibit A (Statement of Work) with all attachments thereto including Attachment A.1 (System Requirements), and this Exhibit D.
2. All System components shall interface and be compatible with each other; and the System components, when taken together, shall be capable of delivering all of the functionality as set forth in this Agreement.
3. Unless specified otherwise herein, the Solution shall be free from any and all material Deficiencies.
4. The System Maintenance service levels shall not degrade during the term of the Agreement.

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5. Contractor shall not intentionally cause any unplanned interruption of the operations of, or accessibility to the System or any component through any device, method or means including, without limitation, the use of any “virus”, “lockup”, “time bomb”, or “key lock”, “worm”, “back door” or “Trojan Horse” device or program, or any disabling code, which has the potential or capability of compromising the security of County’s confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the System or any component to County or any User or which could alter, destroy, or inhibit the use of the System or any component, or the data contained therein (collectively referred to for purposes of this Exhibit D as “Disabling Device(s)”), which could block access to or prevent the use of the System or any component by County or Users. Contractor represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device in any System component provided to County under this Agreement, nor shall Contractor knowingly permit any subsequently delivered or provided System component to contain any Disabling Device.

*IN ADDITION, CONTRACTOR SHALL PREVENT VIRUSES FROM BEING INCORPORATED OR INTRODUCED INTO THE SYSTEM OR UPDATES OR ENHANCEMENTS THERETO PRIOR TO THE INSTALLATION ONTO THE SYSTEM AND SHALL PREVENT ANY VIRUSES FROM BEING INCORPORATED OR INTRODUCED IN THE PROCESS OF CONTRACTOR’S PERFORMANCE OF ON-LINE SUPPORT.*

## 6.2 SYSTEM WARRANTIES

Contractor also represents, warrants, covenants and agrees that throughout the term of this Agreement:

1. All System components shall interface and be compatible with each other.
2. The Solution shall be fully compatible with the rest of the System components and any enhancements or upgrades shall be backward compatible with the County’s standard browser and operating system version operated on County workstations. (See also Exhibit 6 (County Client Workstation Specifications) to Appendix B (Statement of Work).)
3. The System, including the Solution, shall be capable of delivering all of the functionality and meeting all requirements as set forth in this Agreement, including without limitation the System Requirements and the Specifications.

## 6.3 SYSTEM PERFORMANCE REQUIREMENTS

Contractor represents, warrants, covenants and agrees that the System shall meet the System Performance Requirements within Contractor’s control, including but not limited to those relating to Response Time and System Availability, as further specified in this Exhibit D and Attachment A.1 (System Requirements). All System Performance Deficiencies shall be deemed at a minimum Priority Level 2 for the purpose of the correction of Deficiencies and other County remedies.

The System shall be subject to the System Performance Requirements specified below.

<i>System Performance Category</i>	<i>System Performance Requirement</i>
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SYSTEM AVAILABILITY	NINETY-NINE AND ONE HALF PERCENT (99.5%)
RESPONSE TIME	RESPONSE TIME BASELINE(S) SHALL BE DETERMINED IN ACCORDANCE WITH SUBTASK 3.1 (ESTABLISH RESPONSE TIME BASELINE AND METHOD) OF EXHIBIT A (STATEMENT OF WORK)
DISASTER RECOVERY	PURSUANT TO THE PROVISIONS AND REQUIREMENTS OF SECTION 4.5 (BACKUP AND DISASTER RECOVERY).

The following criteria shall be applied with regards to System Performance Requirements:

1. System Availability shall be calculated as follows:  
*SYSTEM AVAILABILITY = (TOTAL MONTHLY TIME – UNSCHEDULED DOWNTIME) ÷ TOTAL MONTHLY TIME*
2. Response Time shall be established using County required and Contractor supplied Response Time measurement method, which is a component of the Solution. The Response Time Baselines shall be established in accordance with Subtask 3.1 (Establish Response Time Baseline and Method) of Exhibit A (Statement of Work) and Attachment A.1 (System Requirements). Response Time Baselines shall apply to all three (3) periods of Response Time measurement: Peak Period, Business Hours and Off-Business Hours.
3. Response Time measurement shall be calculated using a simple average method for each of the three (3) periods of Response Time measurement as provided below.
  - *IF THE AVERAGE RESPONSE TIME IS GREATER THAN THE RESPONSE TIME BASELINE FOR ANY SIX (6) PERIODS WITHIN A CALENDAR MONTH, COUNTY SHALL NOTIFY CONTRACTOR USING THE CUSTOMER SUPPORT TROUBLE TICKETING SYSTEM.*
  - *CONTRACTOR SHALL KEEP COUNTY INFORMED OF THE PROGRESS OF THE RESPONSE TIME PROBLEM WITH THE OBJECTIVE OF PROVIDING A SOLUTION AS QUICKLY AS POSSIBLE.*
  - *CONTRACTOR WILL NOT BE RESPONSIBLE FOR PERFORMANCE WITHIN THE LOS ANGELES NETWORK (LANET).*
  - *INITIAL RESPONSE TIME PERFORMANCE SHALL BE MEASURED IN ACCORDANCE WITH THE METHODS ESTABLISHED PURSUANT TO SUBTASK 3.1 (ESTABLISH RESPONSE TIME BASELINE AND METHOD) OF EXHIBIT A (STATEMENT OF WORK). COUNTY RESERVES THE RIGHT TO MODIFY THE BASELINE AND/OR METHODS IF COUNTY DETERMINES THAT THE SOLUTION IS RESTRICTING OR DELAYING COUNTY'S OPERATIONS.*

## **7. REMEDIES**

### **7.1 GENERAL**

Credits shall accrue for Unscheduled Downtime, including Contractor's failure to meet the System Availability requirements and/or Response Time requirements (hereinafter "Service Credit(s)"). For purposes of assessing Service Credits and this Exhibit D, "Unscheduled Downtime" shall mean the total amount of time during any calendar month, measured in minutes, during which the System has a Major Deficiency that is unresolved by Contractor, excluding Scheduled Downtime.

### **7.2 SERVICE CREDITS**

Without limiting any other rights and remedies available to County, either pursuant to this Agreement, by law or in equity, County shall be entitled to Service Credits calculated based

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on the length of Unscheduled Downtime as provided below, subject to the Dispute Resolution Procedure.

Services Credits will not be assessed for Scheduled Downtime.

<i>Length of Continuous Unscheduled Downtime</i>	<i>Service Credits</i>
<i>1 TO 4 HOURS</i>	<i>1 DAY OF SERVICE CREDITS EQUAL TO 1/30TH OF MONTHLY FEES</i>
<i>4 TO 48 HOURS</i>	<i>2 DAYS OF SERVICE CREDITS EQUAL TO 1/15TH OF MONTHLY FEES</i>
<i>48 TO 96 HOURS</i>	<i>5 DAYS OF SERVICE CREDITS EQUAL TO 1/6TH OF MONTHLY FEES</i>
<i>EACH ADDITIONAL BLOCK OF 96 HOURS THEREAFTER</i>	<i>ADDITIONAL 5 DAYS OF SERVICE CREDITS EQUAL TO 1/6TH OF MONTHLY FEES</i>

Service Credits shall be calculated separately for each applicable incident of a Deficiency and shall be added up to be assessed at the end of each month of System Maintenance. Service Credits, in any amounts, are not and shall not be construed as penalties and, when assessed, will be deducted from County's payment due to Contractor.

### 7.3 SYSTEM RESPONSE TIME DEFICIENCIES

A Response Time Deficiency that fits the definition of a Major Deficiency as a Priority Level 1 or Priority Level 2 shall be deemed to cause Unscheduled Downtime and shall entitle County to assess Service Credits as provided in Section 7.2 (Service Credits) above. In addition, the System shall be deemed to be experiencing Unscheduled Downtime after thirty (30) days of any Response Time Deficiency unresolved by Contractor, entitling County to assess Service Credits.

**SCHEDULE D.1**

**NETWORK DATA CLASSIFICATION STANDARD**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE DETERMINED**

**SCHEDULE D.2**

**IT CONFIDENTIALITY AND ACCEPTABLE USE POLICIES**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE DETERMINED**

**EXHIBIT E**

**ADMINISTRATION OF AGREEMENT**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE DETERMINED**

**EXHIBIT F**

**CONFIDENTIALITY AND ASSIGNMENT AGREEMENT**

*for*

*Community and Senior Center  
Automation Solution*

**JANUARY 2012**

**EXHIBIT F**

**CONFIDENTIALITY AND ASSIGNMENT AGREEMENT**

CONTRACTOR \_\_\_\_\_

**1. GENERAL INFORMATION**

The organization identified above ("Contractor") is under contract ("Contract") to provide Work (as such term is defined in the Contract) to the County of Los Angeles ("County"). County requires each employee, agent, consultant, outsourced vendor and independent contractor of this Contractor performing Work under such Contract to understand his/her obligations with respect to the personal, proprietary and other confidential material, data or information, with which he/she will be in contact. Contractor, by executing this Confidentiality and Assignment Agreement, represents that it shall ensure each such staff member's compliance with the obligations regarding such data and information, as set forth in the Base Agreement, including this Exhibit F.

**2. CONTRACTOR ACKNOWLEDGMENT**

Contractor understands and agrees that all of Contractor's, or any subcontractor's, staff that will provide Work pursuant to the above-referenced Contract are Contractor's, or any subcontractor's, sole responsibility. Contractor understands and agrees that its, or any subcontractor's, staff must rely exclusively upon Contractor, or any subcontractor, for payment of salary and any and all other benefits payable by virtue of such staff's performance of Work under this Agreement.

Contractor understands and agrees that its, or any subcontractor's, employees are not employees of County for any purpose whatsoever and that such staff do not have and will not acquire any rights or benefits of any kind from County by virtue of performance of Work under the above-referenced Contract. Contractor understands and agrees that its, or any subcontractor's, staff do not have and will not acquire any rights or benefits from County pursuant to any agreement between any person or entity and County.

**3. CONFIDENTIALITY**

Contractor, any subcontractor, and their staff, by virtue of performing Work under the above-referenced Contract, may come in contact with (i) Confidential Information (as such term is defined in the Base Agreement to the Contract), (ii) data and information, which County has an obligation to keep confidential by applicable law or otherwise, and (iii) proprietary information belonging to other organizations doing business with County Contractor, any of its subcontractors (collectively for the purpose of this Exhibit F "Confidential Information"). By signing this Agreement, Contractor agrees that, by virtue of involvement in the Work under the Contract, it, any subcontractor, and their staff shall protect the confidentiality of all such Confidential Information pursuant to the terms of Paragraph 21 (Confidentiality and Security) of the Base Agreement and as specified below.



Contractor agrees, on behalf of itself, its subcontractors and all staff, (i) to protect from loss and hold in confidence any and all Confidential Information; (ii) not to directly or indirectly reveal, report, publish, transfer, reproduce to, or for the benefit of, any unauthorized person or otherwise disclose any Confidential Information obtained while performing Work under the above-referenced Contract; and (iii) to utilize the Confidential Information solely for the limited purpose of providing Work pursuant to the Contract. Contractor's, or any subcontractor's, staff shall forward all requests for disclosure or copying of any such information in their possession or care to County's Project Manager under the Contract.

Contractor agrees to report to County's Project Manager under the Contract any and all violations of this Agreement, including unauthorized disclosures or copying of Confidential Information, whether accidental or intentional, and whether by Contractor's, or any subcontractor's, staff and/or by any other person, of which such staff become aware. Contractor agrees and shall ensure that its, or any subcontractor's, staff return possession of all Confidential Information to County's Project Manager under the Contract upon completion of the above-referenced Contract, or termination of employment with the Contractor, or any subcontractor, whichever occurs first.

#### **4. ASSIGNMENT OF PROPRIETARY RIGHTS**

As used in this Agreement, "Products" means any inventions, trade secrets, ideas, original works of authorship or Confidential Information conceived, developed, discovered or made in whole or in part during performance of Work relating to the Contract by any employee, agent, consultant, outsourced vendor or independent contractor of Contractor, including County Materials (as such term is defined in the Base Agreement to the Contract). All Products, while produced, shall belong exclusively to Contractor whether or not fixed in a tangible medium of expression. Without limiting the foregoing, to the maximum extent permitted under applicable law, all Products shall be deemed to be "works made for hire" under the United States Copyright Act, and Contractor shall be deemed to be the author thereof.

If and to the extent any Products are determined not to constitute "works made for hire", or if any rights in the Products do not accrue to Contractor as a work made for hire, Contractor agrees to ensure that all right, title and interest in such Products, including but not limited to all copyrights, patents, trade secret rights and other proprietary rights in or relating to the Products, are irrevocably assigned and transferred to Contractor to the maximum extent permitted by law all. Without limiting the foregoing, Contractor agrees to ensure that (i) all economic rights to the Products, including the exclusive and unrestricted right to reproduce, manufacture, use, adapt, modify, publish, distribute, sublicense, publicly perform and communicate, translate, lease, import, export, transfer, convey, and otherwise exploit the Products, are assigned and transferred to Contractor; (ii) Contractor is entitled to any and all modifications, uses, publications and other exploitation of the Products without consequences; and (iii) Contractor obtains United States or foreign letters patent, copyright registrations and other proprietary rights covering inventions and original works of authorship in the Products.

Contractor agrees to execute all necessary documents and to perform all other acts in order to assign all of Contractor's right, title and interest in the Products in accordance with the Base Agreement.

*SIGNED* \_\_\_\_\_ *DATE* \_\_\_\_\_ / \_\_\_\_\_

*PRINTED* \_\_\_\_\_ *TITLE* \_\_\_\_\_

**EXHIBIT G**

**CONTRACTOR'S EEO CERTIFICATION**

*for*

*Community and Senior Center  
Automation Solution*

**JANUARY 2012**

**EXHIBIT G**  
***Contractor's EEO Certification***

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COMPANY NAME

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ADDRESS

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INTERNAL REVENUE SERVICE EMPLOYER IDENTIFICATION NUMBER

**GENERAL**

*IN ACCORDANCE WITH PROVISIONS OF THE COUNTY CODE OF THE COUNTY OF LOS ANGELES, CONTRACTOR CERTIFIES AND AGREES THAT ALL PERSONS EMPLOYED BY SUCH FIRM, ITS AFFILIATES, SUBSIDIARIES AND HOLDING COMPANIES ARE AND WILL BE TREATED EQUALLY BY THE FIRM WITHOUT REGARD TO OR BECAUSE OF RACE, RELIGION, ANCESTRY, NATIONAL ORIGIN, AGE OR SEX AND IN COMPLIANCE WITH ALL ANTI-DISCRIMINATION LAWS OF THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA.*

**CERTIFICATION**

	<b><u>YES</u></b>	<b><u>NO</u></b>
1. CONTRACTOR HAS A WRITTEN POLICY STATEMENT PROHIBITING DISCRIMINATION IN ALL PHASES OF EMPLOYMENT.	(   )	(   )
2. CONTRACTOR PERIODICALLY CONDUCTS A SELF-ANALYSIS OR UTILIZATION ANALYSIS OF ITS WORK FORCE.	(   )	(   )
3. CONTRACTOR HAS A SYSTEM FOR DETERMINING IF ITS EMPLOYMENT PRACTICES ARE DISCRIMINATORY AGAINST PROTECTED GROUPS.	(   )	(   )
4. WHEN PROBLEM AREAS ARE IDENTIFIED IN EMPLOYMENT PRACTICES, CONTRACTOR HAS A SYSTEM FOR TAKING REASONABLE CORRECTIVE ACTION TO INCLUDE ESTABLISHMENT OF GOAL AND/OR TIMETABLES.	(   )	(   )

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SIGNATURE

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DATE

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NAME AND TITLE OF SIGNER (PLEASE PRINT)

**EXHIBIT H**  
**JURY SERVICE PROGRAM**  
*for*  
***Community and Senior Center***  
***Automation Solution***

**SEE APPENDIX G TO RFP**

**EXHIBIT I**

**SAFELY SURRENDERED BABY LAW**

*for*

*Community and Senior Center  
Automation Solution*

**SEE APPENDIX I TO RFP**

**EXHIBIT J**

**CHARITABLE CONTRIBUTIONS CERTIFICATION**

*for*

*Community and Senior Center  
Automation Solution*

**SEE APPENDIX D, EXHIBIT 12 TO RFP**

**EXHIBIT K**

**SOURCE CODE ESCROW AGREEMENT**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE DETERMINED**



**EXHIBIT L**

**REQUEST FOR PROPOSALS (RFP)**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE INCORPORATED BY REFERENCE**

**EXHIBIT M**

**CONTRACTOR'S PROPOSAL**

*for*

*Community and Senior Center  
Automation Solution*

**TO BE INCORPORATED BY REFERENCE**